LAW AND URBAN LAND

Edited by

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NEW DELHI-110002

PRICE { INDIA Rs. 35.00; ABROAD $ 10.00, £ 5.50 }

March 1978

Printed at : Satish Composing Agency, 910 Jatwara, Daryaganj, New Delhi-110002 (India)

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PREFACE

The laws dealing with urban land forms an important instrument to solve the problems of urban development and renewal. In consultation with the Ministry of Works and Housing it was proposed to hold a seminar on Law and Urban Land with a view to take a stock of such laws and also to assess the help and hindrance they cause in the important field of urban development. We associated in the seminar, administrators, legal experts, planners, engineers and private developers with a view to examine the question thread-bare and make some concrete suggestions. The seminar was divided into four main streams, *viz*; Law of Land Acquisition, Land Use Control, Land as a Resource and Land Regulation including Urban Land Ceiling Legislation.

The seminar was inaugurated by Shri N.J. Kamath, Secretary, Ministry of Works and Housing and representatives from states participated in the discussions. The task of organizing the seminar was entrusted to Prof. H.U. Bijlani and Shri M.K. Balachandran of the Centre for Urban Studies of the Institute. They have done an admirable job in organizing the seminar and bringing out this volume containing the gist of the discussions and the papers presented. The recommendations made during the seminar have also been incorporated.

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NEW DELHI
MARCH, 1978

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INTRODUCTION

H.U. BIJLANI
Professor
Centre for Urban Studies
and
M.K. BALACHANDRAN
Lecturer
Centre for Urban Studies

As long as the rural migrants continue to flow into the cities and as long as urban population continues to increase under the impact of migration as well as its net natural growth, the urban problems are bound to multiply. The foremost requirement of any planner to solve these problems is that of land and the legal structure which would carry him through the schemes of urbanization to meet the demands of increased population. It was, therefore, considered essential to hold a seminar with a view to focus attention mainly on the following aspects:

(*a*) Law and urban land policy with reference to value premises,
(*b*) Law as an instrument of land management,
(*c*) Counteraction, inter-dependence and overlapping of existing laws and their consequences, and
(*d*) Perspective of action.

With a view to facilitate discussions and to crystalize the issues involved, a background paper on "Law and Urban Land" was prepared by Prof. Bijlani of the Centre for Urban Studies. The paper helped to raise the relevant issues which were placed before a group of experts from different disciplines who met under the aegis of the Ministry of Works and Housing. The group comprised of the following:

1. Shri R. Gopalaswamy,
   Joint Secretary, Ministry of Works & Housing (Chairman)
2. Shri K. Biswas,
   Director, Urban Development, Ministry of Works & Housing.
3. Shri S. Harihara Iyer,
   Joint Secretary, Ministry of Law,

4. Shri S.C. Rajguru,
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15. Prof. G.B.K. Rao,
    School of Planning & Architecture.
16. Shri R.N. Haldipur,
    Director, IIPA.
17. Prof. H.U. Bijlani,
    IIPA.
18. Prof. A. Datta,
    IIPA.
19. Shri M.K. Balachandran,
    IIPA.

The group decided to divide the seminar into four distinct sessions and also listed the issues to be discussed in each session.

SESSION I
GENERAL DISCUSSION AND LAW OF LAND ACQUISITION

(*a*) Adequacy or otherwise of the existing laws as applicable to urban land.

(*b*) Urban Land and the Constitution.

(*c*) The Land Acquisition Act, 1894—whether it needs modifications in the light of the Twenty-Fifth Amendment to the Constitution for acquisition of land expeditiously and at a lesser cost? If so, in what way ?

(*d*) In the alternative, should there be a separate legislation for urban land acquisition, doing away with the existing expensive and tedious land acquisition process.

(*e*) If the land itself cannot be acquired expeditiously by the public authority, could there be a law for acquiring the right to develop land ?

(*f*) Should there be a system of land bank for having land readily available for development purposes ?

SESSION II
LAND USE CONTROL

(*a*) The impact and effectiveness of zoning regulations, subdivision rules, building bye-laws, etc., on urban land development.

(*b*) Is there a need for amending municipal enactments with a view to have effective building and development control in urban areas ?

(*c*) The need for architectural control over urban land.

SESSION III
LAND AS A RESOURCE

(*a*) Role of tax measures on urban land development.

(*b*) Betterment levy as an instrument of land management.

(*c*) Betterment levy—methods of evaluation and recovery.

(*d*) Mopping up unearned increment from land owner.

(*e*) Lease hold rights as a financial resource.

(*f*) Impact of municipal taxes on land.

SESSION IV

LAND REGULATIONS INCLUDING URBAN LAND CEILING LEGISLATIONS

(*a*) The Urban Land Ceiling Act 1976—Its limitations and the problems faced by the implementing authorities.

(*b*) Impact of the Urban Land Ceiling Act on : (*i*) Industrial Development, (*ii*) Housing Activities, (*iii*) Group Housing, and (*iv*) Co-operative Societies, etc.

(*c*) The Urban Land Ceiling Act and its application to : (*i*) weaker sections of the society, (*ii*) already developed land and density, etc.

(*d*) Whether there is a need for reviewing the Building Bye-laws in the light of the Urban Land Ceiling Act. If so, in what way?

(*e*) Utilization of the surplus land acquired under the Urban Land Ceiling Act—can the land acquired under the law be auctioned by the government?

The group also identified the paper-writers on the various themes to be discussed in the seminar. In addition to these papers many other contributions were also received making a total of 17 papers.

The subject matter of land acquisition was dealt with in detail in five papers. Dr. S.N. Jain and Dr. Alice Jacob, Director and Research Professor respectively of the Indian Law Institute in their paper on "Land Acquisition in the Context of Urban Planning—Some Suggestions for Procedural Reforms", discussed the need to reconcile the two competing conflicts of interest—acquisition of land for the benefit of the public without much delay and providing fairness to the individual and suggested that at the stage of Collector some procedural delays could be eliminated both in the matter of declaration that a particular land was needed for a public purpose and in the matter of determining the amount of compensation by making a few statutory changes and also suggested the setting up of a Compensation Tribunal under the Act.

In the paper on "Land Acquisition Law : Some Suggested Changes", Mr. K.N. Zutshi, Secretary, Revenue Department, Gujarat came to the conclusion that the Land Acquisition Act,

1894 should be suitably amended so as to enable taking possession of the land immediately after the publication of notification under Section 6 of the Act without . . . waiting for the determination and apportionment of the compensation. He further suggested that the word 'compensation' in the Act should be substituted by the world 'amount' and a progressively reduced amount should be paid instead of market value for the lands acquired under the Act. He also advocated the establishment of a tribunal for dealing with the disputes arising out of the enforcement of the Act.

On the other hand, a view was expressed that this Act had become out of date and no worthwhile comprehensive legislation had so far become available with the local authorities and the government for providing land in a simple manner and at a nominal cost. Shri L.C. Gupta, Secretary, Urban Development and Public Health Department, Bombay in his paper "Some Thoughts on Planning and Development of Urban Areas" felt that on this account most of the master plans prepared in the past had remained on paper while the costs of acquisition of land had now become three-fold and would continue to rise in future. He felt that legislations on the lines of the Bombay Metropolitan Development Authority Act would be more suitable provided the same was extended to the local bodies also. He felt that this Act not only provided for a simple and expeditious method of acquisition of land whether vacant or built upon but also restricted payment to an amount which was hundred times the net monthly income derived from such land. He also advocated the idea of development charges as distinct from the concept of betterment levy which should be fixed with reference to the cost incurred in providing the infrastructural facilities.

Shri Narendar Luther, Special Officer, Municipal Corporation of Hyderabad in his paper has suggested that the administrative procedure under the Land Acquisition Act should be simplified by dispensing with the issue of preliminary notification and by providing for taking possession of the land before the payment of compensation. He advocated for having a uniform law of acquisition for the entire country and to centralize all acquisition under one umbrella. He also suggested for the constitution of special tribunals to deal with disputes and also for the establishment of Land Development Boards.

In his "Reflections on Urban Law and Urban Development", Shri Kalyan Biswas, Director, Urban Development, Ministry of Works & Housing, pleaded for a new system of legislation for urban areas in relation to urban planning and development. The starting point to this approach according to him was the belief that there was no identifiable legislative framework in this field although each individual sector like slums, housing, water supply, sewerage, etc., had their own quota of legislation. Regarding the Urban Land (Ceiling and Regulation) Act he maintained that while it might not answer all the problems of urban land acquisition, it was a significant step forward and that its success would depend on a proper appreciation and its implementation. He, however, concluded that there would be many instances where the imperatives of urban development would still require recourse to a large scale land acquisition not feasible under the Urban Land (Ceiling & Regulation) Act. Additionally, therefore, according to him we would still have to contend with some structural changes in the Land Acquisition Act, 1894 as a basic approach to this problem.

While dealing with land use control Shri V.V. Bodas, Architect, Town Planner, Delhi Development Authority, New Delhi laid emphasis on the impact and effectiveness of Zoning Regulation, Sub-division rules, Building Bye-laws on urban land development with special reference to Delhi Master Plan. Quoting profusely on "Zoning and Development" from Chamber of Commerce, United States and from the "Delhi Master Plan" he stressed that zoning should be considered primarily as a device for the conservation and protection of the urban land and in the interest of preserving the economic worth and stability and its physical usefulness and productivity.

Shri G.C. Mathur, Director, National Building Organization, Ministry of Works & Housing, advocated the "unification of building codes for regulated urban land use economy and low cost housing". He stressed the need to modify the outdated municipal building bye-laws and to popularise and also review the provisions of the National Building Code keeping in view the regional variations and local resources.

In his exposition entitled "Land for Townscaping—Some Essential Considerations", Shri S.P. Mallick, Special Secretary to the Government of West Bengal tried to emphasise that

development of land should not be allowed to follow its own logic of *laissez-faire* resulting in chaos with a mixture of urban blights and slums indicating deterioration and decay of the city. He recommended comprehensive policies based on special knowledge of the potentials of the area which would give rise to the concept of production oriented aspects of urban development. He advocated Howard's idea that new communities in new urban areas should be socially mixed, drawing the deprived poor from the inner city to make them more prosperous and happy. According to him at the moment planning thought was too much obsessed with "controls". The new planning philosophy and management system should keep in the forefront the "special needs of living" as Lewis Mumford had observed and make development socially purposive.

Shri Manohar G. Joshi, Mayor of Bombay and Prof. Abhijit Datta of the Centre for Urban Studies, contributed papers on "Land as a Resource—Tax Policy" and "Taxation and Urban Land Value Increments", respectively. Shri Joshi recommended the levy in the form of an annual tax to mop up the social surplus before the exploiters made away with the profits which they earned without any effort on their part so that the benefit of appreciation was shared by the owner with the entire community. Prof. Datta, however, came to the conclusion that such methods had basic limitations of taxation measures to control and capture unearned increments in land values. He suggested that a separate tax on urban land value increments, on a recurrent basis with graduate rates, like the Taiwan tax, might succeed in controlling speculative transactions of urban land.

Shri R.C. Jain, Commissioner, Government of Madhya Pradesh and Shri Krishna Pratap, Secretary, Delhi Administration in their paper on "Land as a Financial Resource for Urban Development" enunciated series of ideas. They considered that a real breakthrough in this direction is possible only if land became the principal resource for urban development. Every policy devised to yield maximum income on land, according to them, had to be subjected to consideration of the broad socio-economic objectives adopted by the society and the state and should also conform to the accepted norms of good town planning. They advocated specific complementary measures

which were being considered in the wake of the Urban Land (Ceiling & Regulation) Act, 1976. These included taxes on built-up properties covering land above the ceiling limit, tax on luxury constructions and tax on vacant land within the ceiling limit which remained unutilized beyond a specified time. They indicated that for the first time an attempt had been made in Delhi to formulate a well-knit policy and suggested its reorientation for further mobilization of resources. They argued that public policy should ensure that a substantial portion of development value created by the community returned to the community. They pointed out that the recommendations of the United Nations conference on human settlement (Habitat) held at Vancouver, Canada in June 1976 were very pertinent for recapturing the "plus value" of the urban land. They concluded that it was necessary to verify urban land income measures with a view to avoid proliferation of taxes, cesses, levies, etc. It was also necessary to streamline the procedures for collection of taxes, rates and charges on land and reduce the number of agencies for the recovery of the same.

Shri R.M. Kapoor, Director, Sahu Jain Community Affairs Organization, Calcutta, referred to his case study on "Finances of Calcutta Corporation—Problems and Prospects" and indicated how rationalization of the present systems could augment the finances of civic organizations (Published in *Nagarlok* Vol. IX, January-March, 1977, No. 1).

In his paper on "Urban Land Ceiling Act: Emerging Problems and Vistas in Urban Development," Prof. G.B. Krishna Rao, Professor of Planning in the School of Planning and Architecture, New Delhi held the view that the Urban Land Ceiling Act appeared to have been based on a political ideology rather than veered towards achieving an orderly urban development. It could, however, be made a useful tool for attaining goals of urban development. He pointed out that there was ambiguity and obscurity in several provisions of the Act and as such would require several amendments supplemented by several guidelines. He, therefore, suggested that it would be wise for the Government to withdraw the Act and promulgate an Ordinance, socialising (*i.e.*, taking under public ownership) all vacant lands outside the built-up areas in the urban agglomerations and providing for payment of compensation on a graded basis (that

for smaller plots near the market value and that for larger plots a notional amount or a fraction of the market value). Such a measure, according to Prof. Rao, would save not only a lot of botheration to the Central and State Governments and the public but also lead to better results in urban development.

On the other hand, Shri Mahadeva Ayyar, Deputy Secretary, Ministry of Works & Housing and also one of the architects of the Urban Land Ceiling Act, was of the strong view that the provision of the Act could be availed of for increasing the housing stock in urban areas. In his paper on the "Impact of the Urban Land (Ceiling & Regulation) Act, 1976 on Housing—Need for Study", Shri Ayyar suggested that the existing provisions of the Act should be utilised fully for encouragement of housing by private persons who held vacant land in excess of ceiling limit. This could be achieved, according to him, by providing suitable incentives to the private persons in order to encourage them to invest their financial resources on housing.

Shri C.S. Chandrasekhara, Chief Town Planner, TCPO, New Delhi, pointed out that a number of legislations governing urban land were enacted both at the Centre and State levels and with different purposes in view and "on account of this it has been seen that often these laws are not consonant in their objectives and generally conflicts with one another and these conflicts result in slowing down if not defeating the achievement of the broad objectives". To overcome this difficulty he suggested a format for an exclusive Urban Land Act providing for the use and development of urban land, private and public ownership, preservation, protection and conservation of urban land and matters ancillary thereto.

Shri M. K. Balachandran, Centre for Urban Studies, was in tune with the same approach in saying that the laws on urban land in India were so numerous and scattered that it would be extremely difficult for anyone without special training to discover and understand the law that governed urban land. In his paper on "Counteraction, Inter-dependence and Overlapping of the Existing Legislations on Urban Land", he analysed the provisions of some of the existing legislations relating to urban land and tried to highlight their counteracting effects, interdependence and overlappings.

The solution according to Shri Balachandran, lay in the consolidation of the legislations on urban land. Such consolidation also would result in the modernising the law which was desired to be retained in force, by removing from the statute obsolete, obsolescent and unnessary provisions. The law should be capable of being recast in a form which was accessible, intelligible and in accordance with the modern needs, he said.

Prof. H.U. Bijlani in his working paper for the seminar, traced the urban problems and prospects and went on to discuss existing legislations which could be utilised for clearance, development and control of urban land. He came to the conclusion that it was not because of dearth of law or lack of legal knowledge that we saw fellow human beings live in veritable pig-sites jammed like fish in a barrel in the midst of filth and stink and disease and without amenities. Our attempt, according to him, should never be to plan garden cities at exhorbitant costs but to avoid congestion and create an atmosphere in which human beings could breathe free and have the basic amenities. He felt that even though the Urban Land (Ceiling & Regulation) Act, 1976 made available the necessary tools for acquiring vacant land quickly and at convenient cost, this Act had its limitations regarding lands which were not covered under the definition 'vacant'. He advocated follow-up legislations consequent to the Twenty-Fifth Amendment to the Constitution to facilitate acquisition of urban land other than vacant with a provision of ceiling on land prices and issue of public bonds. In respect of projects for weaker sections of the society as envisaged in the Urban Land Ceiling Act, he suggested quick decisions on issues like ceiling costs, percentage returns, monthly rentals, etc. Giving the example of Bolivia's condemnation law applicable to urban areas of Lapaz, his paper advocated this system of condemning land for a particular public use and payments of partial compensation in cash and remainder in bonds. He felt that land banks should be established so that executions of urban development programmes were not held up for want of land. Controls like zoning regulations, sub-division rules, etc., according to him, were only negative restrictions having limited means to direct urban growth. He felt that these had been borrowed from industrialised countries like USA where itself its adequacy was being questioned. The standards set out

therein were also very high and suitable only to affluent societies. He also advocated laws and procedures to mop up unearned increment tax or land, revision of building bye-laws to bring them in conformity with the underlying principles of the Urban Land (Ceiling & Regulation) Act and suitable amendments to municipal enactments to see that the laws were swift and sufficiently punitive to have effective building and development control in urban areas. According to him, establishment of Urban Art Commissions especially in major cities is a welcome step as it would result in artistic control over urban environment.

WELCOME ADDRESS

R. N. HALDIPUR
Director
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Mr. Kamath and fellow participants!

It is my proud privilege to welcome Mr. Kamath and welcome you all to this Seminar on 'Law and Urban Land'. You will agree with me that we are facing in urban areas a number of problems especially in view of the migration that is taking place increasing the urban population in metropolitan cities as well as in other towns. The problems of land utilization, land regulation and control have assumed very great importance. From that angle we thought that the IIPA should look into various legal aspects and also see as to what extent we have legislative support for dealing with such matters and whether the law in fact inhibits or promotes policies that have been adopted for the proper control and regulation of urbanization. This Seminar was designed with this end in view and we requested the experts in various fields to contribute papers discussing various aspects that should go into the seminar. At the outset I would like to thank the resource persons who have given a lot of time and guidance for helping in designing the seminar and also contributing papers. As can be seen from the programme, specific issues have been framed covering land acquisition, land use and control, land as a resource, land regulation including urban land ceiling legislation.

One of the important aspects that crystallized during the preliminary discussion that we had with the resource persons was that different laws enacted as a solution to different problems resulted in counteractions and conflicts in the legal framework. There is need for a search for inter-dependence and to avoid overlapping legislations. The seminar is also intended to highlight these angularities.

It will be very presumptuous on my part to introduce Mr. Kamath to this audience. Mr. Kamath is already very well

known. As Secretary to the Government of India in the Ministry of Works and Housing he is well versed in the area of law and urban land, land acquisition and utilization.

He has held many important positions both in the State Government as well as at the Centre. He had his education both in India as well as at Oxford. He was a fellow of Nuffield Foundation and has represented our country at various international conferences. He has been a leader in some of the Indian delegations. He is also Director in various public sector undertakings. In spite of his heavy pre-occupations he has found time to contribute a large number of articles to various prestigious journals on subjects ranging from land to industries and their management. We are very grateful to him for sparing his valuable time to inaugurate the Seminar. The Seminar, I am sure, will raise certain basic issues and make positive recommendations which will be of great importance for framing policies which will be of immense value to all of us. I welcome all the participants whose contribution to the deliberations will be of great value as they have many years of experience behind them.

INAUGURAL ADDRESS

N. J. KAMATH
Secretary
Ministry of Works and Housing
Government of India, New Delhi

Mr. Haldipur, Prof. Bijlani and fellow participants !

I was happy to know from the Director that the participants of this Seminar have been drawn from different areas of interest in the field of land and its legislation. Whenever I think of land, I am reminded of an extremely interesting and equally wellknown story of a gentleman who had during partition days in 1947, came from West Pakistan and settled down in Delhi. Outside his house he had fixed a name plate "Lord Daswandha Singh". One of the more inquisitive neighbours, could not restrain himself from enquiring of him as to when the title of a 'Lord' or a 'Knight' of the British Empire was bestowed upon him. Daswandha Singh without batting an eye-lid explained that in West Pakistan he was landlord of many acres of land and that after partition the land remained in Pakistan and he the 'lord' minus the land came to Delhi—thus becoming Lord Daswandha Singh.

In fact in my own life, I was born with 10.3 acres of land which, I am told, my great grand father had acquired in the then South Kanara district, now in Kerala. Under the land legislation of Kerala these 10.3 acres of land is in the process of being transferred to the State government, placing me in a far happier position in which I can also perhaps call myself 'Lord Kamath'. The acquisition process in case of this small piece of land where actual transfer is yet to take place, took many years—showing how complicated the transfer laws are.

My intimate association with the hoary Land Acquisition Act 1894 started many years ago when I was a District Magistrate in 1947. This Act was reasonably younger in those days. Today it may almost be in the evening of its life but it will have

to continue with some modifications. When I was a District Magistrate in Vishakhapatnam, I had several occasions to implement this Act and implement it with speed. Speed to my mind is most important. As we go along in life we find speed —that accelerating thrust—becoming more and more important whereas this Land Acquisition Act has an intrinsic merit or demerit of being slow. I remember in 1956, when I had to acquire some land for Caltex Oil Refineries, I had to take some speedy action, in the national interest to establish oil refineries. According to Mr. Tillotson the then Managing Director of Caltex Refineries, this was a refreshing contrast to what he had experienced earlier, during the time of my predecessors.

Looking at the imposing list of issues listed by the organizers of this Seminar, I must admit that they have done something very good in bringing together those who are widely concerned with implementation of these issues and this seminar will enable you to put your thoughts together, discuss the problems and find solutions to lay down guidelines and clarifications that may be necessary. I had specifically requested Mr S. Mahadeva Ayyar, Dy. Secretary, Ministry of Works and Housing, who is one of the architects of Urban Land (Ceiling & Regulation) Act, to contribute a paper and participate in this Seminar. As you are all aware, the Government in pursuance of the socialistic policy, enacted this piece of social legislation to put a stop to the activities of those people who have been holding large areas of land and making huge profits from dealings in land and making it impossible for a common man to survive comfortably in the urban area. Under the circumstances, it was only appropriate that such an Act is made applicable to urban areas.

Housing is a very important part of one's life. So far the favoured slogans of "Roti, Kapda aur Makan" has remained a kind of dream. Now we have started producing standard cloth and with land reforms we have made available land to a large number of people. The Urban Land (Ceiling & Regulation) Act 1976 has also an intrinsic merit of making urban land available to the comman man in our country. In the rural areas, allocation of sites to landless people, under Prime Minister's 20-point programme has made tremendous progress. Against an estimated figure of 11.8 million homeless, nearly 8

million have been allotted sites by State Governments. The other important step taken in this direction is again covered under the 20-point programme and that, as I have already stated is socialisation of urban land under the Urban Land (Ceiling & Regulation) Act, 1976. You will have an opportunity in this Seminar to discuss various provisions of this Act.

As you all know, land is a state subject. It is not in the Union List and not even in the concurrent list but it is in the State List. Even though Urban Land (Ceiling & Regulation) Act, 1976 was enacted by Parliament, it becomes law in the States only when State legislatures adopt the same. Out of 22 States plus the Union Territories, it has been adopted only by 17 States. The remaining five States have not adopted this law. For implementation by the States and Union Territories where this law is applicable, some broad and general approach is to be laid down and that is why we in the Central Government are issuing guidelines from time to time. Mr. S. Mahadeva Ayyar is bringing out a compendium of all the guidelines that have been issued so far. In certain states, I understand that the implementation is not proceeding as fast as it should be. But with clarifications and guidelines issued by the Centre it is hoped that the implementation will pick up. The main purpose of issuing these guidelines is to make implementation easier and uniform by and large. It should be born in mind that guidelines are not law and should not be taken as authority or an order which has got to be adopted.

In this Seminar, I hope that the participants will not only raise problems but will also make an endeavour to find solutions to those problems. Thus alone can certain degree of success be achieved. I will appeal to you that you must approach the Seminar from this point of view. I thank the organizers for giving me this opportunity for meeting the experts. I wish the Seminar every success.

VOTE OF THANKS

H.U. BIJLANI
Professor
Centre for Urban Studies

I consider it to be my proud privilege and pleasant duty to thank Mr. N.J. Kamath, Secretary, Ministry of Works and Housing for inaugurating the seminar. Our thanks are also due to him for the help that the officers of his Ministry gave us in organizing the seminar. A preliminary meeting of experts from different disciplines was held in the Ministry of Works and Housing to identify: (*i*) the main themes on which the seminar should focus attention, and (*ii*) the paper writers for the main themes and we are grateful to Mr. R. Gopalaswami, Joint Secretary and Mr. Kalyan Biswas, Director, Ministry of Works and Housing for the help they rendered in that direction.

The process of urbanization like its product—the city—is mostly disorganized but is also uniquely fascinating. We wanted the seminar to be fascinating but certainly not disorganized. The determination of essential themes helped to flag down the route that the seminar had to take without any diversion into attractive side-lanes of interesting irrelevance. Identification of paper writers for main themes was also rewarding as it culminated in the receipt of seventeen papers which were circulated to the participants in advance. The papers, have been quick to point out congestion, pollution, slums, environmental decay, social atrophy and many other dark clouds looming large on the horizon of urban land. However, they have also been quick to indicate the silver lining as in the paper of Mr. Mahadeva Ayyar, a case has been made out for utilising the urban land under the Urban Land (Ceiling & Regulation) Act, 1976 for building up a housing stock in the country. Mr. G.C. Mathur has strengthened this factor further by highlighting the need for unification of building codes specially keeping in view the urban land use economy and low cost housing. The importance

of these themes, can be appreciated in the light of the results of a U.N. Survey which indicates that from now till the year 2000, it will be necessary to construct twice as many dwellings as have been built so far in the course of human history. I take this opportunity to thank all paper writers for their contributions and also the participants for coming over from different parts of the country and joining in these deliberations.

SUMMARY OF PROCEEDINGS

SESSION I

GENERAL DISCUSSION AND LAW OF LAND ACQUISITION

Prof. Bijlani requested Prof. Deva Raj, Director, National Institute of Urban Affairs to chair the first session which was to focus attention on the Law of Land Acquisition and other issues for general discussion. Initiating the discussion, Prof. Deva Raj observed that the laws applicable to urban land and specially its acquisition, formed an important component of urban development. He then requested Dr. S.N. Jain, Director, Indian Law Institute to present his paper.

While presenting his paper, Dr. Jain observed that the Twenty-Fifth and Forty-Second Amendments to the Constitution had vested the Government with almost unlimited powers for undertaking urban planning. He also felt that the Urban Land (Ceiling and Regulation) Act, 1976 mainly dealt with acquisition of vacant land in urban areas and as such could have been more appropriately passed under the Concurrent List without resorting to Article 252 of the Constitution. On this account he pointed out that if any amendment was to be made to the existing legislation which had been enacted under the state list, it would again have to be referred back to the State Legislatures, which process being time consuming can also create difficulties under certain conditions. Regarding the Land Acquisition Act he disagreed with the suggestion prevailing in some quarters to telescope the two major stages involved in the acquisition process, *viz.*, the process of declaration that a particular land was needed for a public purpose and the process of awarding compensation. According to him the two stages involved questions of entirely different nature; the first stage being the exercise of a discretionary or subjective power and the second stage the objective determination of the question of compensation. According to him the provisions relating to giving a personal hearing was an irreducible minimum and as such should not be bypassed, or

short circuited. Quoting the case of U.K. where the hearing officers were appointed from other departments to hear objections, he made out a case that similar system should also be adopted in this country. He also felt that along with Section 4 notification it would be desirable if individual notices were served on interested persons and the public purpose for which the land was proposed to be acquired should also find a mention in the notification. Quoting profusely from the Mulla Committee Report, Dr. Jain suggested that adequate home work must be done by the officials dealing with the subject in the government to avoid undue hardship to the affected public. Making a concrete suggestion as to how to save time, he indicated that a combined notification could be issued under Sections 4 and 11 of the Land Acquisition Act. Coupled with this was his suggestion that the Land Acquisition Collector could have informal sittings with the claimants. If these suggestions were implemented, the existing tardy and long-drawn out procedure could be streamlined into a quicker process for making awards. Differing with Mulla Committee findings, he felt that land tribunals could settle the disputes amicably and expeditiously.

Mr. Zutshi, Secretary, Revenue Department Gujarat, differing from Dr. Jain said that Sections 4 and 6 notifications should be combined. He felt that the degree of sophistication one would like to achieve in streamlining the Act had to be correlated to the administrative convenience. Pointing out the extent of application, he mentioned that whereas the Land Acquisition Act covered all land, the Urban Land Ceiling and Regulation Act, 1976 dealt with only vacant urban land in urban agglomerations. He also felt that in many cases, the Land Acquisition Collectors resorted to the urgency clause even though there might not be adequate reasons for doing so. He thought that not many such cases would be able to withstand judicial scrutiny. Is it, therefore, right he asked, to resort to such false certification? Pointing out that no time limit had been specified in the Land Acquisition Act for awarding compensation he felt that a maximum period of six months should be a fair time-limit for either side. Referring to the long delays which occurred once the parties obtained stay order from the courts, he supported Dr. Jain's contention of the need for setting up of tribunals. In spite of the Twenty Fifth Amendment to the Constitution, no

follow-up action according to him had been carried out so far in the Land Acquisition Act with the result that compensation continued to be paid according to the existing pattern.

Shri L.C. Gupta, Secretary, Urban Development, Government of Maharashtra, citing the Maharashtra Regional Town Planning Act, 1966 and the Model Town Planning Act, pointed out that under those Acts, the notifications under Sections 4 and 5 would be deemed to have been issued and on that basis they could proceed with the acquisitions. He, therefore, suggested the extension of similar provisions in the other town planning legislations also. Supporting the contention put forward by Mr. Zutsi, he suggested that one of the follow-up actions to the 25th Amendment could be to delete the word 'compensation' and substitute the word 'amount'. This according to him would go a long way to undertake urban development programmes, which otherwise would get bogged down due to rise in land prices. He also observed that the Mullah Committee Report was biased towards land owners and farmers.

The Chairman, Prof. Deva Raj, at this stage, threw the subject open for discussion. Participating in the discussion Mr. Krishna Pratap, Secretary, Land & Building, Delhi Administration narrated the Delhi experience. He said that since 1958, even before the Master Plan became a legal document in 1962, about 68,000 acres of land in Delhi had been notified for acquisition for the planned development of Delhi and about 38,000 acres had since been acquired at a cost of approximately Rs. 72 crores. In addition to this he quoted a figure of Rs. 47 crores towards the cost of development of the land. He explained that 4 Land Acquisition Collectors and 3 courts of district judges were earmarked to hear the land acquisition cases. Justifying the issue of Section 4 notification as far back as 1959 he argued that this was necessary to freeze the value of land at the prices prevailing on the date of notification. Pegging down the price to the date of notification, helped to phase out the development programme for town planning purposes. He also pointed out that the planned development of Delhi was upheld by the Supreme Court as a public purpose.

Intervening in the discussion Shri R.C. Jain indicated that the freezing of large quantity of land could be one of the methods of mopping up the rise in land values. He, however, felt that

payment of compensation at market value under the Land Acquisition Act in spite of the 25th Amendment of the Constitution was a contradiction in itself and felt that large governmental funds had been unnecessarily utilised in acquisition of property in spite of this bold amendment passed by the Parliament.

But Mr. Sonekar, Administrator, Municipal Corporation, Varanasi felt that it would be only fair to pay compensation at the market value although he conceded that this would result in large amounts of finance getting blocked up which was actually paid only after a long time when the proceedings were finalized. He thought that a system could perhaps be evolved by which the Land Acquisition Authorities did not insist on the payment of the entire amount at the time the request was sent for acquisition.

Mr. N. Lakshman Rau wondered whether there could be a fusion between the Land Acquisition Act, 1894 and the Urban Land Ceiling and Regulation Act, 1976 which would serve the twin purpose of cutting down the cost of compensation as well as hastening the process of acquisition. He pointed out that when the Land Acquisition Act, 1894 came into existence, the problems of urban development were not so complicated or acute and as such the Act was not intended to serve large scale acquisition. It was, in fact, meant for acquiring lands for departments like railways, etc. He agreed that in the present context of pressure on urban land for large scale development the Act required amendment.

Mr. G.C. Mathur, Director, N.B.O. pointed out that the pace at which urban development was taking place needed radical thinking in the context of land acquisition of urban areas. He also felt that we should plan on the basis of housing for all and not for a group of people and in that stream of thinking he also supported the idea of tribunals.

Mr. S.P. Mallick, Special Secretary, Government of West Bengal was concerned about the multiplicity of legislations dealing with land, especially with reference to the quantum of payment. He pointed out that whereas under the Land Acquisition Act payment was to be made according to the market value under the Land Ceiling Act, the amount to be paid was only nominal. He, therefore, posed the question as to how one

should decide whether a particular piece of vacant land in urban agglomerations be acquired under one Act or the other. He was not in favour of enacting a separate law for urban land acquisition as according to him it would be a time-consuming procedure, but suggested that essential amendments to the existing Land Acquisition Act should be carried out so as to ensure speedier acquisition. He also advocated the idea for the award of a provisional though *ad hoc*, amount towards ultimate compensation at the time of acquisition so that the persons concerned would not suffer on account of long delays involved in the existing procedure for final payment. He agreed with Prof. Bijlani for the creation of land banks for urban development and setting up a centralised agency for monitoring, etc., of the urban land which could be used for various other social purposes also. Quoting the case of Delhi, where 68,000 acres of land had been acquired for development of Delhi, he felt that better results would have been achieved if there was one agency to control the whole urban land.

Prof. Jagannadham of IIPA raised the question of government issuing an Ordinance first and then getting it passed through the Parliament without examining in detail the conflict such enactments might cause to the existing legislations. In addition to this he pointed out that such a procedure resulted in enacting social legislations without associating the people and without finding out whether the people would be benefited or not. He also pleaded for establishing cells with various departments of government for examining the possible conflicts between the existing and future policies and advise the government in the light of examination of conflicts in the existing and new policies and laws. In the context of the recent amendments to the Constitution with regard to the role of judiciary and tribunalisation of certain governmental activities, he suggested that it was all the more important that the conflicts between laws were avoided.

Dr. Palvia of IIPA referring to the large scale acquisition made by certain metropolitan cities indicated the need for phasing out the development programmes in conjunction with such large scale acquisition. This he felt was lacking keeping large tracts of urban land unutilized.

Mr. Kapoor, Director, Sahujain Community Affairs

Organization while referring to the obsolete uses of urban land in the form of graveyards, etc., enquired whether a hierarchy of land uses could be set up depending upon their importance in an urban agglomeration.

Favouring the suggestion to have a separate Land Acquisition Act for urban areas, Prof. G.B.K. Rao of school of Planning and Architecture felt that measures should be taken to see that such a legislation was not attacked on the ground of violation of Article 14 of the Constitution.

Summing up the discussions, the Chairman for the session Prof. Deva Raj observed that the Seminar appeared to lead to the following conclusions:

1. All lands for planning and development areas should be acquired under a uniform pattern of enactment and a comprehensive law should be enacted keeping this end in view.
2. Compensation payable for land acquisition in urban areas should be specifically laid down and should be uniform for all land and buildings to avoid any discriminatory valuation.
3. The Constitution had been amended to validate the amount payable for land acquisition under a law but the new Constitutional provisions had not been profitably exploited.
4. Tribunals could be incorporated in the Land Acquisition Act. It was pointed out that many Improvement Trust Acts had provided for tribunals and they had been upheld by various courts.
5. Planned development had been upheld by the courts as a public purpose.
6. The subject of land acquisition in India was dealt with by the Ministry of Agriculture in the Centre and by the Revenue Department in the States although urban planning and development was dealt with by the Ministry of Works and Department of Urban Development in the States.

SESSION II

LAND USE CONTROL

Mr. N. Lakshman Rau, Administrator, Corporation of the city of Bangalore, was requested by Prof. Bijlani to chair the second session on Land Use Control. Mr. Rau requested Dr. G.C. Mathur, Director, N.B.O. to present his paper on "Unification of Building Codes for Regulated Urban Land Use Economy and Low Cost Housing—A Conspectus".

Dr. G.C. Mathur highlighting the uneconomic use to which urban land is being put today referred to the problems which such policies were creating. He referred to the outdated building bye-laws which continued to be followed by local authorities resulting in positive hindrance to low cost housing. He advised unification of building code to solve the crisis in urban development. The Indian Standards Institution, has brought out a national building code which according to him, would bring about radical changes and help adopt the latest building technology. It also takes care of construction safety, health safety and fire safety and infrastructure facilities like water supply, sanitation, etc. In view of this it has a performance oriented outlook.

Shri Bodas reiterated that zoning was essentially a legal tool and administrative method of putting into effect certain features of a comprehensive plan. He also felt that zoning ordinances must be custom made for the community involved. Each use zone has to have its own special regulations and it is not right to apply a single set of regulations to the entire city. Pointing out the DDA's experience of construction of industrial sheds and development of 400 sq. yds. and 1200 sq. yds. plots for light and extensive manufacturing respectively, he felt that the industrial land had been gainfully developed and optimum utilisation achieved. He also pointed out as to how punitive action in the form of severing water connections proved to be more useful than the ineffective provision of zoning regulations. Programming of city development, he said, was directly related to the zoning regulations which in turn must be oriented to the city's economic growth. According to him model regulations would not serve any useful purpose. However, the code caters to the

need for permanent type of structures but does not provide for semi-permanent and temporary structure which come up at the periphery of urban areas or in the resettlement colonies. The code therefore requires reorientation in the direction of low cost housing. He emphasised that merely preparing the master plans or zonal plans was not sufficient unless such plans were reviewed periodically to assess the changing requirements of an urban area. He also challenged the effectiveness of zonal regulations especially when they were enacted in an area without specific state authorization. Referring to the zoning regulations, sub-division rules and building bye-laws with a special reference to Delhi Master Plan, he felt that the same were quite comprehensive in nature especially with reference to land use. He however, pointed out that such zoning regulations were not to be used as nuisance control nor could they be used to accomplish the end result of human segrregation like excluding certain communities or income groups from certain areas. In answers to a question raised by Prof. Jagannadham of IIPA he indicated that it was perhaps mainly on account of paucity of trained and competent personnel that the revision of the master plan or the zonal plans had not been undertaken in Delhi.

Shri S.P. Mullick, Special Secretary to the Government of West Bengal, while presenting his paper on "Land for Town Scaping—Some Essential Considerations" said that zoning regulations could be best applied to development of virgin lands and not to already built-up areas. Urban Planning, according to him, should have an inter-disciplinary approach and should be based on a legal framework. There was also a lack of basic planning maps and information. As time progressed, he felt the development policies would emerge not from a single planning document but from a series of documents and studies dealing with different aspects of development. There would also be a need for feedback and subsequent modifications even during implementation. Referring to Calcutta Metropolitan District programmes, he said that the development patterns of settlements showed a strong linear bias along the river Hubli whereas in other areas, it had more or less followed the railway alignments. He felt it was necessary to strike a balance between urbanization and agricultural development so that one did not suffer at the cost of the other. He felt it was necessary to have a basic law on

town and country planning to ensure both the public and private sectors in the matter of development of land under the overall guidance of a central coordination authority. Apart from that there had to be various norms and standards for infrastructural facilities. Explaining the three-tier structure in Calcutta he said that at the lowest level a municipality should be in charge not only of its own area but also of the contiguous areas which fell within its ambit; at the intermediate level a single corporation with its rural appendages and the Metropolitan Region itself should become the appex body of those clusters for planning and executing the programmes. He also felt that there could not be any static 'blue print' proposal for urban development and that it was now recognised to go in for decentralisation to satellite townships around Calcutta. The growth of new towns and satellites could be built on public land along the periphery of the city. Acquisition of land was a typical British concept, he felt and there might be other international experiences in that field. In that respect the imposition of ceiling on urban land, he said, was a unique experiment.

The Chairman, Shri Lakshman Rau, threw open the session for discussion. Initiating the discussion Prof. H.U. Bijlani, Centre for Urban Studies, said that land use control over urban land would become effective through a three-fold action. The foremost is through town planning measures, *viz.*: (1) preparation of master plans and zonal plans, (2) preparing layouts and enforcing their approvals for virgin lands, (3) regularisation of uncontrolled settlements,and (4) preparing plans for urban villages to make them a useful part and parcel of the overall planned development programme. The second stage, he said, was to exercise control while sanctioning building proposals for individual structures in accordance with the master plan and building regulations. The third stage was the dealing with the structures which came up in an unathorized manner. In a civic organization which is normally called upon to control development of virgin lands there are hardly two or three sections in the municipal Acts which empower these organizations to deal with, approve and control the development as well as sub-division of such lands. The controlling provisions are hardly supported by effective punitive actions. All that the civic organization can do to the defaulting offender is to prosecute him resulting in

paltry penalties when large amounts of money are at stake in unauthorised development. As a result there are cases of number of unauthorised colonies within urban agglomerations which come up with a queer cooperation between the poor and the rich—the poor who are in need of low priced plotted land and the rich who are ready to dispose of their agricultural lands by converting them into ill-planned and underdeveloped residential plots. Referring to the need for a unified code of building bye-laws in cities, an idea which was advocated by Dr. Mathur, he said that an Indian city normally comprised of : (*i*) an old core which had remained in existence for nearly a hundred years or more, (*ii*) a newly developing city around it, (*iii*) urban villages which got engulfed within the newly developed areas, and (*iv*) the rural village. The people staying in all these four categories have different life styles. For example, in the old cities people have built houses with open spaces in the centre and covered areas on the periphery of the plot whereas the newly developed areas have the modern concept of setbacks in front rear and sides depending upon whether the plot is detached, semi-detached or a part of raw housing. Similarly, the urban villages which become parts of newly developed areas have been existing with a different style than their surroundings. The houses in the rural areas come up with a courtyard concept and an adequate space for keeping cattle so essential for rural living. It would be impossible to have a unified bye-law which should cover all these different life styles. Nor, he felt, would it be fair to ask the people to change their centuries old life style and switch over to the imported form of living being adopted in newly developed colonies. One has, therefore, to have a separate approach covering all these varying situations and patterns of life. The building bye-laws whether as they prevail in various cities or as they are embodied in the National Building Code are essentially made to cater to the structures for the affluent society and the poor who live in resettlement colonies or at the fringes of urban areas have been totally forgotten. He, therefore, stressed the need for radically changing the building codes to be in tune with that strata of people who comprised a large majority of urban dwellers. Zoning regulations, he said, provided a negative control and was a concept adopted from foreign countries like the U.S.A. where itself its

adequacy was being questioned. The zoning regulations cannot replace the bye-laws or other types of planning controls.

Mr. L.C. Gupta advocated the need for town planning laws for effective land use control. He pointed out as to how difficult it was to shift non-conforming use, and noxious industries in normal times. Segregating economic activities from residential uses is in many cases well nigh impossible. Referring to the Delhi experience of shifting of whole sale shanty areas to the resettlement colonies and non-conforming commercial and industrial uses to conforming areas, he said that in contrast Bombay had not been able to achieve any tangible results.

Mr. Kapoor asked a question whether a particular building could be used for one particular purpose only and in case it had initially been sanctioned by a municipal authority for a particular use how could that building become unauthorised by a mere misuse. He also felt that the building bye-laws should derive their inspiration from planning laws, zoning and street alignment regulations. Referring to the parking spaces that were provided in multi-storeyed buildings, Mr. Kapoor wondered why the building laws should not correlate the traffic generating capacities of building to the traffic handling capacities of the streets in front. Mr. Kapoor advocated that even town planning and building laws should have a socialistic content. He wondered how in Indian cities where mass transit must have the predominant role, foot paths are not a statutory requirement—with the result that in cities like Calcutta, foot paths are being cut short, to provide wider carriage ways for the motorists.

Prof. Jagannadham of IIPA thought that we were not encashing on our past experiences gained in different parts of country and he advocated the need for proper documentation of such experiences. He also stressed the need of building bye-laws taking into account the climatic conditions and advocated the need for more liberal compounding of offences when the building was built. He also pleaded for a comprehensive national urbanization policy.

Mr. Dattatri, Senior Planner, Madras Development Authority explained that in the process of urban development it was not necessary to shift all industrial uses, but some of them could be permitted to remain with an embargo on their expansion. Yet

others could perhaps be earmarked for shifting within a specified moratorium period. He referred to the myriad of laws governing building, zoning regulations, land use controls which resulted in a lot of corruption. He thought that Bombay Development Control Rules would be an adequate answer as they have combined all these regulations into one law. Referring to the U.K. experience, he said that industries in non-conforming areas were made to move only when developed industrial land in conforming areas was made available to them. Advocating mixed land use as compared to the imported land use concept practised hitherto, he pointed out that his Authority had started planning accordingly.

Shri Sayed S. Shafi pointed out that the Act could substantially increase the densities in central areas which, in turn, would affect the infrastructure and essential community services. Even the properly planned areas could be badly affected by "mechanical sub-divisions" into small plots which the Act could bring about. The aesthetic quality could be seriously affected. He, therefore, suggested that an altogether different approach based on treating every city on individual basis for "socializing urban lands" should be developed. The law should be in the form of an enabling legislation which could promote the social objectives as also enforce the quality of urban life which, if the present law was indiscriminately applied, could vitiate.

Replying to Mr. Kapoor's question Prof. H.U. Bijlani said that under some municipal Acts if an existing building which had been duly sanctioned for a particular use, changed that use the structure automatically became unauthorised and without a proper sanction and could be dealt with accordingly. However, it would be difficult, he said, to go about demolishing such structures after the service of due notices and resulting litigations.

He also pointed out that the other important issue which that session had to discuss was the need for architectural control over urban land. Delhi, he said, was the only city in our country to have adopted an Urban Art Commission Act to control the aesthetic quality of its urban environment. Setting up of such Commissions might mean yet another hurdle which a citizen will have to cross. Some more artistic persons pointed out that

although greatest industrial achievements did emerge from Committees but certainly not the greatest paintings, sculpture or other such pieces of art. Artists, he pointed out, did not come in teams. Yet he felt that some artistic control over the urban environment was more desirable than no control at all. In the short period of its existence the Urban Art Commission had brought about many divergent views which had been expressed both by those who were in charge of the control and others who were being controlled by it. Referring to a cleaner look which Delhi roads provided minus the ugly hoardings and the recent control exercised over street furniture, he felt that it was an example worth following by the remaining states also.

Mr. L.C. Gupta and Mr. R.C. Jain supported the contention of setting up of Urban Art Commissions. They referred to the Toronto, London and Washington Art Commissions which in fact had provided the necessary lead in this direction.

Mr. Krishna Pratap felt that a Committee functioning as an Art Commission as compared to an individual would be better as it would not become autocratic in its attitude.

Prof. G.B.K. Rao felt that the Urban Art Commission was a misnomer as it had little to do with 'art' and appeared to be posed on British practice. He stated that the municipal laws duly provided for controls over elevation.

Mr. Mullick on the other hand thought otherwise and said that for keeping the sanctity and environment of historical monuments intact such Art Commissions would be essential.

Mr. V.V. Bodas said that Washington and Amsterdam were two good examples where Urban environment had achieved excellent results by virtue of such Art Commissions.

Mr. N. Lakshman Rau, Chairman for the session winding up the discussions observed that the basic question was to resolve whether we should have a plethora of legislations or one consolidated legislation dealing with zoning regulations, building bye-laws and architectural controls. Controlling the density of population in urban agglomerations which keep expanding not only due to their own net growth but more so due to rural migration was extremely difficult. He agreed with Prof. Bijlani that uniform bye-laws even within one city were not possible for various categories of life styles prevailing. Land use control he felt, if made inflexible would result in problems which would

be difficult to solve and, therefore, he suggested that the present day concept of mixed use was a welcome thought. He also referred to the existing laws in conflict with each other rather than providing mutual support. He informed the participants that Bangalore had also followed the Delhi example in respect of Urban Art Commission by incorporating the relevant provisions in the Bangalore Development Authority Act.

SESSION III

LAND AS A RESOURCE

The third session started on 29th January, 1977 at 10 a.m. with Thiru R. Natarajan, IAS Member, Board of Revenue, Madras, in the Chair. He requested Shri Krishna Pratap, Secretary, Delhi Administration to present the paper on "Land as a Financial Resource for Urban Development" jointly prepared by Shri R.C. Jain, IAS, Commissioner, Government of Madhya Pradesh in New Delhi and himself. Presenting the paper, Shri Krishna Pratap said that urban growth being highly capital intensive with a much lower financial cost benefit ratio than most of the other fields of development, the government investment found much lower priority for urban development and funds were diverted to more productive centres like industry, etc. Traditional methods of financing, therefore, would be inadequate and a breakthrough was possible only if land became the principal source for urban development. Detailing the present forms of taxation of land raising resources as well as complimentary measures which were being considered in the wake of Urban Land (Ceiling Regulation) Act, 1976 he opined that those measures were mostly *ad hoc* and sporadic and did not possess a power of a well-knit overall policy. Dwelling upon the Delhi model he explained as to how income raised from land was diverted to urban development. He also explained as to how with a revolving fund of about Rs. 12.3 crores, the Delhi Development Authority spent about Rs. 72.7 crores on acquisition and Rs. 47.6 crores on development of land from the revolving fund during the fifteen years, period of 1961-1976,

The receipts for the fund during this period totalled Rs. 109.2 crores and the financial operation under the scheme during these fifteen years had been of the order of Rs. 125 crores, thus making the projects self-sustaining. He advocated that leasing of land as against the free hold system was advantageous and that the latter was basically unprogressive and cumbersome to the planning process. Quoting from the U.K. situation and the recommendations of the United Nations Conference on Human Settlements (Habitat) he favoured the idea of recapturing the plus value of the urban land.

Prof. Datta of the IIPA while presenting his paper on "Taxation and Urban Land Value Increments" gave a detailed account of the recoupment charges like the betterment levy, the development charges and conversion tax and mopping up taxes on urban land values, such as, capital gains tax. He pointed out that among all the taxes on land value increment, the Taiwan tax was reported to be most successful. According to him a tax on urban land value increments would be successful only if the following conditions were satisfied, *viz.*, (*a*) close collaboration with the land registration agencies and the taxing authorities, (*b*) creation of a central valuation agency for property assessment, (*c*) application of the rates on a progressive scale, and (*d*) a positive policy with regard to undervalued properties. He concluded by saying that a separate tax on urban land value increments on a recurrent basis with graduated rates, like the Taiwan tax, might succeed in controlling speculative transactions of urban land. Such a tax, to be effective, would call for a competent valuation agency and a high degree of administrative capability.

Mr. R.M. Kapoor, Director, Sahujain Community Affairs Organization, Calcutta, presenting his paper on "Finances of Calcutta Corporation—Problems and Prospects", made out a case that even property taxes could become a major, recurring source of revenue for covering up the developmental costs. In order to do this, he stressed, however, that the numerous built-in deficiencies of the present system would have to be tackled.

Referring to his studies of the Finances of Calcutta Corporation, Shri Kapoor highlighted the following among the problems of the present system:

(*i*) the current use of rent based annual rateable valuation

suffered from inherent defects due to obsolete rents, old tenancies, and depressed rents due to numerous corrupt practices,

(*ii*) the current slab system in Calcutta, which had been in vogue since the 1951 Act, was defective inasmuch as the ratepayers in higher valuation ranges were subjected to descending rates of taxation, contrary to the established norms of higher taxes for higher valuation,

(*iii*) the assessees among the economic activity institutions who caused greater strains on the civic services, made comparatively, very small contributions to the civic finances.

Mr. Kapoor stated that as a short-range reform, the West Bengal Government had introduced a 'non-residential cess', to tackle the last mentioned problem.

Mr. Kapoor, however, stressed that in the ultimate analysis, a major breakthrough in the current property system could not be achieved, until and unless, the very concept of determining property taxes on the basis of rateable valuation, itself, was scrapped altogether. Highlighting the essential characteristics of the new system, Mr. Kapoor said, that to be scientific such a system would have to respond to the following needs:

(*i*) it must have a correlation with the costs for providing civic services;

(*ii*) to be fair, it should make higher demands from such assessees who place larger burdens on the civic services (such as the non-residential users of properties);

(*iii*) it should be amenable for corrections governed by the wardwise changes in population densities, from one census period to another;

(*iv*) it should simulate the real-life situation of differences in rent structures, depending both on the geographic locations in the city, and the situation of properties at vantage points, such as along major roads/parks, etc.

(*v*) it should have scope for levy of additional cess with a view to achieve some 'developmental objectives'—such as higher rates in most congested areas to discourage further congestion; or, higher rates for industrial premises situated in the 'non-conforming' zones and lastly, but more important than all else;

(*vi*) it should reduce the 'subjective' element in the assessment of the lakhs of properties so that the scope for corruption was reduced, if not eliminated altogether;

Mr. Kapoor mentioned that he had completed the work on a system which would advocate the following:

(*i*) delinking of property taxes, both from the 'rental' and 'capital value' systems of assessment;

(*ii*) introduction of 'Land Tax' and 'Building Tax' on the basis of area measurements;

(*iii*) introduction of a 'Slab System' on the basis of permissible 'Floor Area Ratios';

(*iv*) variations in the above mentioned taxes on zonal basis, additional cesses for non-residential uses of properties, zonewise surcharges, wherever necessary, to achieve the developmental objectives;

(*v*) changes in tax rates consequent to changes in population density;

(*vi*) extreme degree of simplification of assessment procedures—eliminating the regular periodic assessments altogether; basing the IST assessment on data furnished to corporation with the building plans; and revision of the same, only when building modifications were carried out.

Shri Syed S. Shafi, the Additional Chief Planner, Town and Country Planning Organisation, initiating the discussions opined that no two models of metropolitan cities were similar. The same, he felt, was the case between Delhi and Madras. The urban land policy in the large metropolitan cities could not be viewed devoid of their content, environment, historical development and physical form. The law as applicable to urban land, he felt, had to serve an overall social purpose. Referring to the experience of planned development carried out in the capital city of Delhi, he observed that it might not be possible (even feasible) for every other city in the country to follow Delhi's example automatically. Each city must be treated on its own.

Another point emphasised by Shri Shafi was that the manner of development undertaken by DDA without proper programming and active public participation had curbed even legitimate private or cooperative initiative in the matters of

urban development. It was pointed out that even though Delhi's Master Plan covered all the area of the Union Territory, only certain selected areas have actually been taken up for development; whereas other areas even more critical, were neglected because presumably they were not so profitable or too complicated to be taken up by the development authority. The stress on development had been lopsided and largely applied to selected areas of Delhi, notably in south leaving the eastern and northern areas almost untouched. On the other hand, planned development meant overall development of the entire city. The acquisition and development programmes should have been according to a programme and in a well-conceived time sequence. The social objective in the planned policy had unfortunately been the main sufferer notwithstanding all declarations to the contrary. Auctioning of land even when the same was earmarked for social or community facilities, or for 'informal sector' had been an unfair proposition as it all added up in inflation making space beyond the reach of most of the citizens. The development of green areas in a time seqnence were essential for development of a healthy environment. This too had been lacking, particularly for the lower income groups, usable open space was difficult to come by.

Prof. Deva Raj, while commenting on the Delhi experiment of urban development expressed the view that most of the other cities in the country were only now making a start in the field of urban development and Delhi had provided a lead particularly in setting up a revolving fund. The development works carried out by the DDA could not satisfy even 40 per cent of the requirement of developed land. The provision of built-up houses had been a more recent activity and fell far short of the housing needs of the city. He concluded that in other parts of the country the development authorities had not received even a portion of this financial backing in the form of revolving funds nor had they made any headway in the field of large-scale land acquisition.

Intervening in the discussion Prof. Bijlani of IIPA said that before proceeding further with the success-stories of the Delhi Development Authority and adoption of its working as a model for the development authorities in other town one should decide upon the scales or norms with which one should measure

the quantum of success. When the Master Plan for Delhi became a legal document in the year 1962 it laid down that its primary function would be two-fold: (*i*) to make available developed land in adequate quantities and at reasonable price to its citizens; and (*ii*) to develop satellite towns in order to check the inflow of migrants to the capital city. The philosophers who wrote the master plan having departed, the same had now become a book of fairy tales to be read out to children by chimney side in winter nights. The land price today, he said, for a residential plot was in the vicinity of Rs. 400 for a square yard, and DDA had auctioned commercial sites at more than ten times this value. A two-bed room house was available today on a rental of Rs. 1200. Could these prices be considered as reasonable, he asked. The story regarding development of satellite towns or the progress made in the project of national capital region reminded one, he said, of the story of:

"Three men of Gotham,
Went to sea in a bowl.
If the bowl was stronger
The story would be longer".

Mr. S.P. Mullick felt that Urban Land Taxation law should be enacted by all the states. He also felt that auctioning the land and ploughing it back for urban development purposes was a welcome measure. There had also to be a package of measures in order to collect adequate revenue from land like betterment levy charges (to be collected only after the betterment was carried out) land taxation, auctioning urban lands, etc.

Mr. L.C. Gupta pointed out that the cost of development like providing infrastructure facilities was not normally added on to the cost of land. For instance, under section 21 of the Urban Land Ceiling Act the cost of houses could be prescribed by the Government but unfortunately the cost of infrastructure was not thought of. Here again the cost of infrastructure would fall on the local authorities. He, therefore, suggested that local authorities should be allowed to recover development charges if they were to provide the infrastructure facilities for proper urbanization.

Mr. Natarajan said that each city had a personality of its own. According to him it would be harsh to tax people in the

urban areas left and right. While it was true that the individual was not entitled for the unearned income from land, it was equally true that the municipal body also could not have any claim on it as it did not contribute anything for such increase in the value of land. He suggested that the local bodies should be satisfied with the levy of property tax on the income from the properties. He also felt that the raising of resources would start an inflationary spiral.

Prof. G.B.K. Rao from the School of Planning and Architecture pointed out that the concept of development charge which originated in the 1947 Act of England was provided for under the Model Act also. It was successfully tried in Hyderabad in recent times and it seemed to have a good potential. About the betterment levy, he said, that it was abandoned even in England where it originated. According to him the levy had a very limited purpose He also said that land as a resource for development should not be carried too far as it might conflict with the ultimate goals of equity and justice. He felt that the cost of acquisition of land for development purposes should be as low as possible and the cost of development reasonable.

Prof. Deva Raj said that using urban land development as a resource should not be confused with property taxation policy. The two, he felt were distinct and apart from each other. Local bodies could benefit only by taking up land acquisition and development. Even with private colonisers they could undertake development works on behalf of the colonisers and recover the costs in the form of development charges. Haphazard and inadequate provision of infrastructure facilities could, thus, be avoided and there could be even unauthorised colonies and underdeveloped layouts. Land as a resource could best be utilized only if land was available on large scale for development and certain areas particularly commercial plots were earmarked for auctioning. According to him the existing provisions in the municipal Acts for the levy of certain taxes were adequate but they need to be fully exploited. They had also not been able to enforce betterment levy and recover development charges.

Mr. Natarajan intervening in the discussion said that it was also difficult to collect betterment levy as it was not possible

to work out and equate the effects of betterment with such levy.

Mr. Krishna Pratap referring to Prof. Bijlani's comments clarified that he had merely stated the actual position pertaining to the working of the Delhi Development Authority and did not make out a case for its universal application. In fact, that policy could be utilized with suitable changes which would vary from situation to situation and state to state.

Mr. Sonekar, Administrator, Varanasi Municipal Corporation, speaking from his experience pointed out that private colonisers instead of developing the land fully themselves acted as middlemen and tried to palm off their responsibility of providing infrastructure facilities to civic authorities. Deterrent punishment was called for such land racketeers, he suggested. According to him nearly 80 per cent of the population had an earning capacity of less than Rs. 250 per month. Could the remaining 20 per cent be made to provide basic infrastructure facilities and housing for the rest of the population, he asked. Mopping up finance from that limited population of "haves" for "have-nots" was not feasible.

Mr. Natarajan, Chairman of the session summing up the discussion, said that property tax seemed to be the mainstay for urban development. He felt that there should be separate tax for buildings and lands. Referring to the Madras State he informed that there was a differential rates of taxation, but the same had been abandoned about two months ago. He also advocated the addition of development costs to property tax.

SESSION IV

REGULATIONS INCLUDING URBAN LAND CEILING LEGISLATION

The Fourth and Concluding Session started with Prof. G.B.K. Rao, Professor of Planning, School of Planning and Architecture in the chair. He requested Shri M.K. Balachandran, IIPA to present his paper on "Counteraction, Interdependence and Overlapping of Existing Legislations on Urban

Land". Presenting his paper, Shri Balachandran said that there was a strong case for consolidating the various legislations on urban land in India. He pointed out that the existing legislations on urban land in India were so numerous, scattered and complicated that it was very difficult for any person without special training to discover and understand what the law was on urban land. "We have the legislations starting from the Land Acquisition Act 1894 and ending, for the time being, with the Urban Land Ceiling Act, 1976. In between the two we have Municipal Acts, Town Planning legislations, Slum Clearance Act, Development Authorities Acts, Urban Art Commission Act, etc. All these legislations deal with urban land in one way or the other. One has to search through the voluminous statute book to ascertain the law that governs urban land. Some of these legislations have overriding effects on other laws while many of them are interdependent. There are overlapping provisions also."

He pointed out that the Municipal Acts in India contained provisions for the exercise of control over the development of urban land. They had the power to acquire land for undertaking development activities, for regulation of building activity, demolition of dangerous buildings and unauthorised constructions, removal of congested building, prevention and prohibition of nuisances, etc. He pointed out that the Act, however, was dependent and was subject to certain other laws which were in force in Delhi for exercising their powers. Thus the Act could exercise its power to acquire land only through the Land Acquisition Act, 1894, he said.

He proceeded "In approving the layout plans the Act enjoins the corporation to see that the layout plan does not conflict with the master plan or the zonal development plan. Similarly, the sanctioning of the erection of building or execution of work is not only subject to the provisions of the Municipal Act and bye-laws but also any other law or rule or bye-law or order made under such other law. The Commissioner has also to see that the proposed building or work is not affected by any scheme of acquisition of land for any public purpose. In case of erection of building on either side of a new street, the Commissioner can refuse sanction if such work is in contravention of any other scheme or plan prepared not only

under the Act but also under any other law for the time being in force. Similarly, the preparation of improvement schemes and housing schemes, are to comply with the provisions of the master plan or the zonal development plan prepared in accordance with the law.

"The Act empowers the Commissioner to demolish and stop unauthorised constructions. Even though this power is not specifically made subject to any other law, it is provided for in the Delhi Development Act that such powers in the case of a "development area" are to be exercised by the Delhi Development Authority and in the case of any other area by the competent authority under the local authority. However, the Development Act further provides that those provisions shall be in addition to and not in derogation of any other provision relating to demolition/stoppage of building operations contained in any other law for the time being in force. There appears to be an overlapping of jurisdictions in the case of demolition and stoppage of unauthorised constructions, as the Development Act does not take away the powers of the Corporation given under the Corporation Act. Again, in the case of demolition of dangerous buildings, it is only the Corporation that can exercise the powers and not the Development Authority (even in the development area) as such a power is not conferred on the Development Authority under the Development Act.

"The powers of the Corporation to remove congested buildings, to require improvement of buildings unfit for human habitation and to demolish such buildings, to remove insanitary huts and sheds and to frame improvement schemes, etc., can be compared to the powers provided for under the Slum Clearance Act. Even though the Slum Clearance Act has overriding effect over the Corporation Act one might feel that these are overlapping provisions, as the Corporation Act was enacted after the Slum Clearance Act came into force.

"The Slum Clearance Act lays down a special procedure for the acquisition of land for the purpose of the Act without relying on the land Acquisition Act, 1894 and provides for a different basis for the determination of compensation. The Act, however, is dependent on the provisions of the Land Acquisition Act for deciding disputes regarding apportionment of compensation and for dealing with the amount of compensation

deposited in the court.

"The Urban Land Ceiling Act also provides for an easier procedure for the acquisition of vacant land without relying on the Land Acquisition Act, 1894. Another novel feature of the Act is that it does not use the word "compensation" but uses the word "amount" which is in conformity with the Twenty Fifth Amendment. The formula prescribed under the Act for the payment of compensation (*i.e.*, amount under the Act) and the mode of payment are also different and more convenient and easier. Payment of "market value" or "the just equivalent of what the owner has been deprived of" is done away with. However, this Act also is dependent on the Land Acquisition Act in determining the price of the land while exercising the right of pre-emption for purchasing the land.

"The Land Acquisition Act, 1894 being pre-constitutional does not have to satisfy the constitutional requirements to sustain its validity. It is an existing law under the Constitution and as such is saved from the constitutional requirements. All the other legislations are subject to the overriding powers of the Constitution. The Slum Clearance Act, the Delhi Development Act and the Urban Land Ceiling Act have overriding effect on other laws. Thus, the Slum Clearance Act specifically provides that "nothing in this Act shall affect the operation of the Slum Areas (Improvement and Clearance, Act, 1956)". The Delhi Development Act and the Urban Land Ceiling Act contain similar *non-abstante* clauses. However, it is for the legal experts to say as to what would be the result if two legislations having similar *non-abstante* clauses, contain provisions which are contrary to each other."

He concluded by saying that the legislations were scattered and numerous with interdependence, overlappings and overriding effects with the result that one would have to search through the law to find out what the law was on urban land. According to him the solution lay in the consolidation of the existing legislations on urban land and in modernising the law by removing from Statute obsolete and unnecessary provisions. The law should be recast in a form which would be accessible, intelligible and in accordance with the modern needs, he said.

Mr. Mahadeva Ayyar, Deputy Secretary, Ministry of Works & Housing, explaining the three main features incorporated in

the Act, *viz*, (*i*) imposition of ceiling on the holding of vacant land held by a person (an individual, a family, a firm, a company or a body or association of individuals), (*ii*) imposition of ceiling on the plinth area of dwelling units to be constructed in future, and (*iii*) regulation of transfer of urban property, quoted various sections of the Act to make out a case that the Act was intended to encourage housing. He said: "Section 4(3) of the Act, enables a person to hold vacant land in excess of the ceiling for the purpose of group-housing. Section 19(1)(5) of the Act exempts a housing cooperative society from the provisions of this law. Section 20(1) of the Act empowers the state government to permit a person to hold vacant land in excess of the ceiling limit if it is in public interest. Section 21 of the Act empowers the competent authority to permit a person to hold vacant land in excess of the ceiling limit for constructing dwelling units with a plinth area not exceeding 80 sq. meters for the weaker sections of the society. Section 22 provides for redevelopment in accordance with the master plan after demolition of the existing building subject to clearance by the competent authority and section 23 authorises the state government to dispose of excess land for the common good." He observed that increasing the stock of houses, was undoubtedly subscribing to the common good. The success of the Act, he felt would be evaluated by assessing whether it had contributed to increase the existing housing stock and it mainly depended on a proper and practical application of the above mentioned provisions. Referring to the country's population projections as 945 millions in the year 2001 A.D. he said that out of that 278 millions would be in urban areas and 667 million in rural areas. The number of households, he said, was expected to increase from 103 millions in 1979 to 169 millions in 2001 A.D. The present housing shortage on the eve of the Fifth Plan was estimated to be 15.6 million units out of which 3.8 million units was in urban areas and 11.8 million units in rural areas. This shortage was expected to increase to 65.6 millions in 2001 A.D. The estimated rate of house construction in the country being round two dwellings per 1000 population per annum as against 10 per thousand population recommended by the U.N. to wipe out the shortage. The fiscal aspect of this situation would be that an investment of the order of Rs. 8,520

crores would be needed to wipe out the present housing shortage in the country, considering the cost of a house in urban areas at Rs. 10,000 and in rural areas at Rs. 4,000. This did not include additional requirements of funds for natural growth in population and replacement of unserviceable houses.

Making a series of suggestions and analysing the same with reference to the Act, Shri Ayyar concluded that the existing provisions of the Act should be utilised fully for encouragement of housing by the private persons who held vacant land in excess of the ceiling limit and to encourage private persons to invest their financial resources on housing. Suitable incentives should be provided to them, he said.

Presenting his paper on "Urban Land Ceiling Act: Emerging Problems and Vistas in Urban Development", Prof. G.B.K. Rao termed the Urban Land Ceiling Act as a unique legislative measure because it was unprecedented and had far-reaching consequences on the way of life, national economy and the citizen's fundamental rights. He also pointed out that no other enactment had perhaps, met with such vehement criticism in recent times thus making it highly controversial. Some critics, he said, even considered it ill-conceived, ambiguous and obscure in detail and procedures. He felt that the foremost stimulus for the Act came from the opponents of agrarian reform legislation which was reinforced by the need to check racketeering and speculation in land by anti-social forces in urban areas. The Urban Land Ceillng Act might appear to interfere with fundamental rights of the citizens as guaranteed in Article 19(1)(f) and also of Article 31(2) of the Constitution. But Article 31(C) which was brought in by the 25th Amendment provided immunity to laws enacted for securing the principles specified in Articles 39(B), and (C) from judicial scrutiny as to whether they would violate Art. 14, 19 and 31. The Parliament also placed the Ceiling Act in the Ninth Schedule to the Constitution so as to save it from judicial scrutiny. Despite this, he pointed out that the Andhra Pradesh High Court restrained the Centre and the State Government from enforcing the Act in any of the urban agglomeration in the state. The court observed that, since the state legislature consisting of the Governor and the two houses did not pass a resolution expressing the desirability of leaving the matter of imposing a ceiling on urban

land to the Parliament, the provisions were not enforceable in the state of Andhra Pradesh.

Describing the broad objectives, basic concepts and restrictions and exemptions of the Act, he said, that due to the Act, speculators and colonisers would make a glorious exist from the estate development business. He raised the question whether urban development authorities would be able to fill up the gap. If not there would be urban chaos resulting in squatting and slums. Despite the drawbacks, he felt the private colonisers operated efficiently in response to the public demand and the same might not hold good in respect of public sector.

The Ceiling Act, he felt, had been based on a political ideology rather than achieving orderly urban development. It could, however, be made useful tool for the purposes of urban development by bringing about several amendments and guidelines. He concluded by saying that it might be wise for the government to withdraw the Act and promulgate an ordinance socializing vacant lands and provide for payment of compensation on graded basis. Such a measure, he felt, would not only save a lot of botheration to central and state governments but also lead to better results in urban development.

Prof. Deva Raj initiating the discussion supported the contention of Shri Balachandran that there was multiplicity of legislation dealing with urban land and that there should be a single consolidated law. Mr. Natarajan was, however, of the view that it would not be desirable to go in for a single legislation to deal with heterogeneous subjects like slum clearance, urban development, land acquisition, etc.

Answering the query raised by Shri Balachandran as to what would happen if two legislations having the *non-abstante* clause would conflict with each other, Mrs. Alice Jacob, Professor, Indian Law Institute, said that in such cases the latest law would prevail over the earlier one.

Starting the discussion on the Urban Land Ceiling Act, Shri L.C. Gupta wanted to know whether section 20 of the Act could be utilised for giving exemption for group housing.

Prof. Rao answering the question said that if exemptions were to be given to group-housing schemes, all multi-storeyed buildings which were not made for weaker sections of the

society would get covered and that would go against the spirit of the Act.

Shri Krishna Pratap, Secretary, Delhi Administration threw up the question whether the government should build houses only for the weaker sections of the society. Answering the query himself he said that society did not consist of only weaker sections and that government should take up the entire housing construction.

"The type of planning we are witnessing today especially in the national capital, Delhi", observed, Shri Syed S. Shafi of TCPO, "appears to be devoid of real concern for the weaker sections." "The poorer you are", he said with obvious reference to the newly development resettlement colonies developed in Delhi by DDA, "the farther you are from the work centres". Thus, a very crucial recommendation which, he observed, was to promote a positive relationship of work and shelter had been totally vitiated. Instead of rehabilitating the people near their work places which could have reduced load on the transportation system, they had been forcibly shifted miles away. He also wondered if the present legislation could serve any social purpose.

Prof. Bijlani of IIPA referring to section 21 of the Urban Land Ceiling Act observed that vacant land in excess of ceiling could be utilised by the owner for construction of dwelling units having an area of not more than 80 square meters for the weaker sections of the society. He thought that the word "weaker section" was a misnomer as no one belonging to that section can afford to have such dwelling units which would cost nearly Rs. 40,000. He also mentioned that the weaker section had been defined having an annual income of Rs. 7,500 which also he said was being revised by the government to a figure of Rs. 10,000 per annum. It was, therefore, obvious, he said that such dwelling units were not envisaged for weaker section and that it would be advisable to amend the section suitably.

Mr. Khan felt that the exemptions given under sections 19(1) (iv), (v), (vi) and (vii), 20 and 21 would dilute the other provisions of the Act thereby defeating the very purpose of the legislation. The exemptions granted in particular to the Trusts and Cooperative Societies would be greatly misused at the cost of larger interests of the society.

Mr. Sonekar wanted to know as to what guarantee was there that the houses constructed for the so-called weaker sections would not be given to other people.

Prof. G.B.K. Rao felt that if the rental was not subsidised, the dwelling units meant for weaker sections could not be utilised by many. He said that the Government was not clear as to what proportion of the cost of land would be added to the cost of construction.

Mr. Zutshi felt that by extending the time-limit for exemptions under section 21 of the Act, its implementation had been bogged down. He also observed that housing activity had been adversely affected. There was also an atmosphere of uncertainty. He felt that there was not much use enacting such a legislation.

Mr. Mahadeva Ayyar replying to the discussion observed that there was no need for changing the definition of "group housing". He, however, agreed with Prof. Bijlani that the limit of annual income for the weaker section which was fixed at Rs. 7,500 was proposed to be revised to Rs. 10,000 per annum. Regarding the doubt expressed by some speakers that new cooperative societies would be formed to take undue advantage of the exemption provisions under the Act, Mr. Ayyar said that due to specific provisions in the Act laying down the time-limit such fears were unfounded. He also said that the last date for submitting applications for getting exemptions under section 21 of the Act would be April 1, 1977. Referring to Prof. Bijlani's observation that nobody belonging to weaker section could pay a price of Rs. 40,000 for a dwelling unit, he said, that the Act spoke only of the maximum limit and that did not mean that dwelling units at a cost lesser than that could not be constructed.

Prof. Bijlani, reiterating his views said that no private entrepreneur would go in for smaller and cheaper units as they would like to make their schemes as remunerative as possible within the permissible limits of the Act.

Dr. S.N. Jain, Director of the Indian Law Institute, expressed the view that it would have been better if the Parliament had enacted the law under the concurrent list, assuming that there was an essential necessity to deal with cases where land was held by a person in more than one state. This factor had led to enactment of a legislation which was quite complicated

He felt that as such cases would be extremely few, and that no individual would be able to keep land in each State in excess of the area prescribed, it would have been still better if the states were left to enact the legislation on the subject themselves. Commenting on the directions issued by the Central Government to the states for uniform implementation of the Act, Dr. Jain said that those directions had no statutory force and they might not be legally enforceable at the instance of the individual. If the states disregarded the directions of the Centre, the matter would raise inter-governmental controversy.

Shri S.P. Mullick, commenting on the peripheral limits laid down by the Act said the same was confusing and the people did not know whether they were governed by the Act or not. He also pointed out that there was lack of records and up-to-date city surveys which acted as an impediment to the implementation of the provisions of the Act. He was also of the opinion that the guidelines issued by the Centre from time to time had considerably watered down the spirit of the Act.

Shri Syed S. Shafi pointed out that the Act would severely increase the densities which in turn would affect the infrastructure and essential services. Even the properly planned areas would be badly affected by sub-divisions which the Act would bring about. He, therefore, suggested that an altogether different approach of socializing such lands should be followed which would not result in the above mentioned deficiencies.

The Chairman for the session, Prof. G.B.K. Rao concluding the session observed that there indeed, was a multiplicity of legislations relating to urban land and there were also some obvious conflicts which needed to be removed. He also felt that the possibility of having one comprehensive planning law could be explored in the light of the U.K. experience. Regarding the Urban Land Ceiling Act, he observed that many doubts and drawbacks were brought out during the discussion and the legislation had yet to prove its usefulness. He, however, felt that it might be more appropriate to repeal the same and to bring about a new legislation which would aim at socializing the urban land.

RECOMMENDATIONS

RECOMMENDATIONS

1. In respect of land acquisition, it was felt that follow-up legislations consequent to the twenty-fifth Amendment to the Constitution may be expedited to facilitate acquisition of urban land other than vacant lands covered under the Urban Land Ceiling Act, with provision of compensation under the Ceiling Law and for issue of public bonds.
2. The feasibility of having a separate legislation for urban land acquisition may be examined taking into account the overlappings, interdependence and conflicts in the existing multiplicity of laws dealing with urban land.
3. Conflicting views were expressed about telescoping the two important stages in the acquisition proceedings, *viz*, the process of declaration and the award of compensation. It was, however, agreed that delays due to non-handling over of title due to quantum of compensation taking long time to be settled could be avoided by suitably amending the Land Acquisition Act so that title of land could be transferred without prejudice to the rights of the owner. Yet another suggestion was that a certain percentage of compensation may be paid to the persons interested in the land immediately and the balance paid after the proceedings are over.
4. It was pointed out that Bolivia has a condemnation law applicable to urban areas of La-paz. This law may be examined to evolve a legislation to condemn land for a particular public purpose and pay only partial compensation in cash and remainder in bonds.
5. It was also agreed that if land itself cannot be acquired by public authority, it should be examined if legislation could be brought up to acquire the right to develop the land.
6. It was felt that land banks should be established so that execution of urban development is not held up for want of land.

7. The desirability of combining section, 9 and 11 of the Land Acquisition Acts should be examined. Coupled with this was the suggestion that the Land Acquisition Collector should have informal sittings with the claimants in the determination of compensation. This would streamline the existing long drawn out procedures for making the awards.
8. It was felt that setting up of tribunals for settling disputes in matters relating to land acquisition would considerably reduce the delay in litigation.
9. The Maharashtra Regional Town Planning Act, 1966 and the Model Town Planning Act have provisions according to which the notifications under sections 4 and 6 are deemed to have been issued under specific provisions for notification under those Acts, and on that basis one could proceed with the acquisition. Similar provisions in other town planning legislations may also be made.
10. While enacting social legislation public should be associated so as to bring about the maximum benefit from such legislation.
11. Controls like zoning regulations, subdivision rules, building bye-laws and authority to approve layouts are means of directing urban growth. These techniques which are negative restrictions on the use and development of land have been borrowed from advanced countries especially U.S.A. where itself its adequacy is being questioned. Many times it is seen that the standards set in these regulations are very high and the same may be suitable for affluent societies but certainly not for settlement patterns of low income families. Such standards need modification.
12. It was suggested that suitable amendments may be made to municipal enactments to ensure laws to be quickly enforceable and sufficiently punitive to have effective control on building and development activities in urban areas.
13. Adequate machinery to implement the existing town planning Acts should be created and supported by proper training facilities for planners, administrators, engineers, etc., so that they can effectively implement the plans

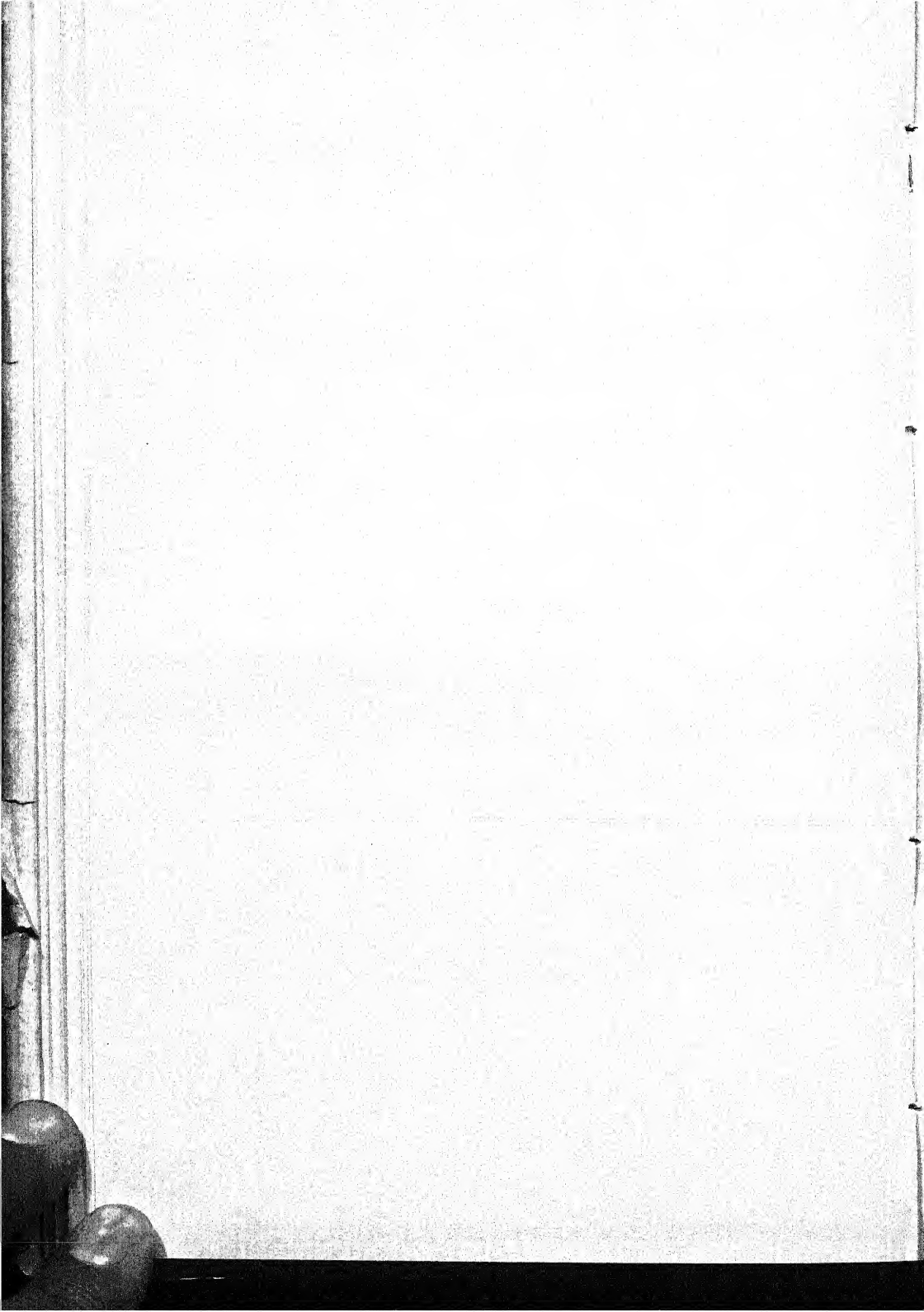
prepared.

14. The existing building bye-laws in most of the civic bodies are outdated and require revision. They should also be brought in conformity with the underlying principles of Urban Land (Ceiling and Regulation) Act, 1976. The National Building Code also needs revision to cover semi-permanent and temporary structures in the resettlement colonies and the like. In other words it requires reorientation in the direction of low cost housing. While revising building bye-laws it was felt, that they should be based on the format adopted in the National Building Code.
15. It was felt that it may be difficult to have one unified set of building bye-laws covering the entire city due to varying life styles prevailing in the old core, newly developing areas and the urban and rural villages. Also the varying climatic condition in different parts of the country will require a different approach to building regulations.
16. It was felt that there was a lack of basic planning maps and information and that government should take necessary steps to bridge the gap. It was also suggested that there should be appropriate arrangements for documentation and necessary feedback on the implementation of plans, regulations, bye-laws, etc. so that revisions could be carried out on the basis of such information.
17. A view was expressed that the existing method of land use planning wherein educational institutions are earmarked in one place, work centres in another place and residential areas located at far away places has created many difficulties and inconveniences specially in transportation. It was felt that the idea of mixed land use planning which was gaining momentum was a welcome step in situations and life-styles prevailing in our country.
18. Establishment of Urban Art Commissions especially in major cities is a welcome step as it results in aesthetic control over urban environment.
19. Laws of taxation should be improved so that betterment charges and unearned increment tax on land are easily recoverable.
20. It was felt that a separate tax on urban land value increments on a recurrent basis with graduated rates, like the

Taiwan tax, might succeed in controlling speculative transactions in urban land. Such a tax to be effective would call for a competent valuation agency and a high degree of administrative capability.

21. It was suggested that the local authorities should be allowed to recover development charges if they are to provide the infrastructure facilities for proper urbanization.
22. The concept of land as a resource for development should not be carried too far as it might conflict with the ultimate planning goals.
23. It was felt that there is multiplicity of legislation on urban land with overriding effects, interdependence and overlapping provisions and as such there is a strong case for consolidating the existing legislations on urban land.
24. The Urban Land Ceiling and Regulation Act, 1976 has a number of provisions which could be utilized for creating a housing stock in urban areas.
25. The definition of "weaker section" in the Urban Land (Ceiling and Regulation) Act, 1976 should be suitably amended as the existing definition is quite confusing and does not take care of the really weaker section of the society.
26. It is also suggested that decisions on issues like ceiling costs, percentage returns, monthly rentals are to be expedited so that projects for weaker sections/societies as envisaged in the Urban Land Ceiling Act get going.

PAPERS



LAW AND URBAN LAND

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Urban land has been often labelled by writers rather picturesquely as a 'concrete jungle' or a 'human zoo'.

"Imagine a piece of land twenty miles long and twenty miles wide. Picture it wild, inhabited by animals, small and large. Now visualize a compact group of sixty human beings camping in the middle of this territory. Try to see yourself sitting there, as a member of this tiny tribe, with the landscape, your landscape, spreading out around you farther than you can see. No one apart from your tribe uses this vast space. It is your exclusive home-range, your tribal hunting ground. Ever so often the men in your group set off in pursuit of prey. The women gather fruit and berries. The children play noisily around the camp site, imitating the hunting techniques of their fathers. If the tribe is successful and swells in size, a splinter group will set off to colonize a new territory. Little by little the species will spread.

Imagine a piece of land twenty miles long and twenty miles wide. Picture it civilized, inhabited by machines and buildings. Now visualize a compact group of six million human beings camping in the middle of this territory. See yourself sitting there, with the complexity of the huge city spreading out all around you, farther than you can see".[1] In the second scene there are a hundred thousand individuals for every one in the first scene. The space has remained the same, only the land has become urban in a mere few thousand years although the man has remained, biologically speaking, the same, not for a few centuries but for a million hard years. This land, in other words, has gone through a process of urbanization.

Urban Prospects

Urbanization is a world wide phenomenon. In 1850 there

were only four cities in this world which had a population of one million or more. By 1900 this number became nineteen. But by 1960 there were 141 and today the world's urban population increases at a rate of 6.5 per cent per year.[2] The projections made by United Nation's demographers indicate that in a period of 35 years, from 1971 to 2006, the world population will double from 3.7 billion to 7.4 billion.[3] As can be seen from Table I the urban population, in cities of over 20,000 is anticipated to be in excess of 3 billion and the aggregate population of large cities will exceed of 2 billion.

TABLE I

PROJECTED PERCENTAGE OF WORLD POPULATION AND NUMBER OF URBAN RESIDENTS FOR DESIGNATED DATES

Date	*Percent Urban (over 20,000)*	*Number of Urban Residents (in billions)*	*Percent Large Cities (over 100,000)*	*Number of Residents in Large Cities (in billions)*
1970	39	1.4	24	0.8
1975	42	1.7	26	1.0
1985	49	2.3	32	1.5
2000	61	3.9	42	2.7

SOURCE: Kingsley Davis, *World Urbanization 1950-70*, Vol. II (1972)

Yet another way of viewing future urban prospects would be to examine projections that indicate the number of years in which the population in a particular country will double. Keeping the rate of increase as in 1972, the projections indicate a spectrum, at or near one end of which are Sweden and U.K. with 174 and 139 years and at or near the other end are India, Egypt and Mexico with 28, 25 and 21 years respectively. In other words India would double its 1972 size in the year 2000.[4]

According to 1971 census, India's urban population was 109.1 million forming 19.9 per cent of the country's total population. Looking at the figures given in Table II, it would

TABLE II

TRENDS OF URBAN POPULATION IN INDIA

	1901	*1911*	*1921*	*1931*	*1941*	*1951*	*1961*	*1971*
Total Population (Millions)	238.4	252.1	251.3	279.0	318.7	361.1	439.2	547.8
Urban Population (Millions)	25.8	25.9	28.1	33.5	44.2	62.9	78.9	109.1
Urban as Percentage of total	10.8	10.3	11.2	12.0	13.9	17.3	18.0	19.9
Growth Index (1901-100)	100.0	100.4	103.6	129.4	170.8	241.6	305.4	422.9
Decennial Growth	—	0.35	8.27	19.12	31.97	41.43	26.41	37.83
Number of Urban Places	1917	1909	2047	2219	2424	3060	2700	2921
Growth Index (1901-100)	100	100.4	106.8	115.8	126.5	159.6	140.9	152.4

be seen that there has been a more than four fold increase in a span of seven decades ending 1971 in the urban population of India.

The pace of urbanization no doubt slowed down during 1951-61 and after but it would be a little premature to believe that it would not accelerate in the coming decades. According to Davis the average population increase of five major Indian cities, *viz.*, Calcutta, Bombay, Hyderabad, Delhi and Bangalore, declined from 52 per cent between 1941-51 to 33 per cent between 1951 and 1961.[5] These figures, however, have been challenged by Jakobson and Prakash who state that a major change in the census definition of "urban" for the 1951-61 decade may have meant a higher growth rate for this decade and for the preceding one.[6] For Delhi alone the percentage growth rate in 1941-51 was 107 (mainly due to partition of the country) and it dropped down to 63 per cent in 1951-61 decade. Similarly, Bangalore declined from 90 per cent to 29 per cent. This decline continued through the decade preceding 1970, when the average percentage growth rate of the five cities taken together, declined to 24 per cent. This decline in rate of growth has been experienced by many other cities that underwent spectacular growth during World War II. This certainly does not indicate a numerical decrease.[7] As can be seen from Table II the urban population in India crossed the 100 million mark during 1971 census and reached a figure of 109.1 million constituting nearly 20 per cent of the total population of 547.8 million. Similarly, the number of urban places also grew to a figure of 2,921.

Urban Problems

Two basic factors responsible for this urban population growth are: the growth of urban economy and movement of population from villages to larger cities. Unfortunately, data regarding per capita income are not available for Indian cities and towns to indicate their economic level. It is, however, noticed that whereas 23.98 per cent of the class I cities have a highly diversified occupational pattern, the corresponding percentage for class V and class VI towns is as low as 13.80 and 5.50 per cent respectively.[8] This imbalance in the occupation pattern is one of the main weaknesses in India's urbanization.

The spread of urbanization is also not even. Whereas population of class I cities keeps increasing, the smaller towns of less than 20,000 category classified as class IV, V and VI have proved to be unattractive. As can be seen from Table III of cities with population of 100,000 or more in India and USA, more than 50 per cent urban population stays in cities having population of more than 100,000. Also the number of these cities in India grew from 76 in 1950-51 to 142 in 1970-71. As compared to this, the number of American cities of similar magnitude increased from 106 to 156 during the same period.

TABLE III

CITIES WITH POPULATION OF 100,000 OR MORE IN INDIA AND U.S.A.

Year	*No. of Cities 100,000+*		*Their Population (Millions)*		*Percent of Total Urban Population*	
	USA	India	USA	India	USA	India
1950/1951	106	76	44.3	23.7	45.9	41.8
1960/1961	132	113	51.0	38.2	40.8	48.4
1970/1971	156	142	56.4	57.0	37.7	52.4

In most of our cities and towns, urban services and amenities, living conditions and the environment are already woefully deficient. To make the matters more difficult, these cities face the problem of additional influx of population every year. The thread-bare infrastructure of services existing in these cities gets over-stressed and is often torn to pieces. The foremost problem these urban areas face is that of shortage in housing and resulting squatting on public lands, encroachments, uncontrolled settlements and increased densities in built-up areas. Housing shortage in urban areas was about 2.8 million units in 1951 which rose to 9.3 million units in 1961 and over 12 million

units in 1971. The estimated shortage of housing units in 1980 is placed at 25 million. The immediate impact of this is felt on services like inadequate or near nonexistent water supply and sewerage, limited road network and open spaces, shortage of schools, hospitals, public places community facilities and poor sanitation. Those in authority are faced with the twin problem of: (*a*) not permitting haphazard growth, and (*b*) making available extra facilities to the growing population and that too at a speed which should be commensurate with the rate of increase in urban population. The city managers and the planners are at once surrounded by a multitude of problems: financial, administrative, technical and legal. In this paper we shall restrict our comments to the "legal tools" that are available at present in our country to help our planners to solve and save the situation enumerated above on urban land.

Problems—Legal and Administrative

The foremost requirement before the planner will be obviously that of land. The city is normally a municipality or a corporation with limited boundaries and infrastructure which due to expansion of population has also to expand both its boundaries and infrastructure. Considering that it has a will and means to do it, it is faced with difficult administrative, and legal problems. In order to bring out their importance, I can do no better than quote justice Wanchoo, former Chief Justice of India:

"These (administrative and legal problems) require an administrative structurewhich would carry through the schemes of urbanization to meet the expansion of population. We have in this connection in many states administrative bodies, called Improvement Trusts and others of the same kind. These bodies have to be created by laws passed by the states and have to be armed with legal authority to deal with problems arising out of planning. They naturally have to interfere with the property rights of individuals which have the protection of Articles 19 and 31 of the Constitution. Laws have to be enacted which necessarily interfere with the property rights of individuals.

These laws have naturally to pass the test provided by Article 19(5), of the Constitution which lays down that nothing in Article 19(i)(f) of the Constitution, shall prevent the state from making

any law imposing reasonable restrictions on the exercise of any of the rights conferred by that clause in the interests of the general public. Many such laws when they are passed are attacked by individual property owners on the ground that they are unconstitutional and impose unreasonable restrictions on the exercise of the citizen's right to acquire, hold and dispose of property. These legal hurdles have to be overcome before any town planning scheme can get under way. But even after the legal hurdles have been overcome and the laws passed by the state are upheld as constitutional, the great problem of administering these complex laws which strike a delicate balance between the right of the individual and the necessities of public good has to be undertaken. This requires a body of efficient personnel in public service who are experienced in the field of town planning to carry out schemes that are eventually approved. This also requires a degree of integrity and devotion to duty on the part of public servants who have to administer these schemes in order that results may be achieved in as short a time as possible. It further requires on the part of the citizen, of this country some sense of sacrifice of their individual rights in the interest of common good, for it has not been unknown that one can tankerous citizen standing on the letter of the law and defending his right to property irrespective of the need for the public good can hold up beneficial schemes for long periods of time through resort to law courts. If the trend of movement from villages to cities continues, as it is expected to continue, and if the stream of such movement becomes larger in volume than at present, as it is expected to be, all these problems will be accentuated further. That will require an amount of concerted effort on behalf of all from the Central Government down to smallest municipality, from the topmost public servant to the lowest in the department dealing with town planning and will also require a sense of public duty and public good in the citizens of this country so that they may be able to subordinate their individual interest to the common good to some extent at least".[9]

From amongst the existing legislations which can be utilized for clearance, development and control of the urban land indicated below, some of the more important are discussed in detail, in the forthcoming paragraphs.

1. Land Acquisition Act.
2. Slum Clearance Acts.
3. Municipal Acts.
4. Improvement Trust Acts.
5. Town Planning and Development Acts.
6. Taxation Laws.
7. Urban Land Ceiling Act.
8. Urban Arts Commission Act.
9. Rent Control Legislation.
10. Water and Air Pollution Acts.
    (*a*) Zoning Regulations including Densities.
    (*b*) Land use laws.
    (*c*) Laws for promotion of public health safety and welfare.
    (*d*) Industries (Development and Regulation) Act.
    (*e*) Building Regulations, etc.

Law and Land Acquisition

For implementation of any urban development programme, availability of land and its control are essential prerequisites. Controls like zoning regulations, subdivision rules, building bye-laws and authority to approve layouts are means of directing urban growth. These negative restrictions on the use and development of land cannot replace the necessity of acquisition of land. These techniques have been borrowed from more advanced countries and by themselves are not effective for solving the problems of developing countries. Uncontrolled settlements and squatting on public lands pock-mark the urban landscape and attempts to control their growth are doomed to failure. Acquisition of land and creating an adequate stock of urban land would be essential not only for future growth but also for a large number of public use and clearance programmes. One of the most important legal tools available for this purpose is the Land Acquisition Act, 1894. The procedure prescribed under this Act is not only complicated but also leads to subsequent litigations and delays. It is incumbent to issue a notice under section 4 followed by another declaration under section 6 that the land is required for a public purpose. Yet another notice under section 9 is required to be given for filing claims for

compensation. At all or any of these three stages objections can be raised resulting in delays. This procedure can perhaps be revised and shortened without denying the right to the owner to be heard. Again, the transfer of land takes place after final determination of compensation which can take years to finalise. Delay could be reduced at this stage also by making suitable provision that the title of land could be transferred in favour of Government subject to final settlement on compensation and without prejudice to the right of owner to agitate the question of quantum of compensation. The Land Acquisition (Amendment and Validation) Act 1967 has tried to overcome some of the difficulties and now enables to freeze the prices on a particular date by issuing a notification under section 4 provided the acquisition in pieces or as a whole is made within three years. Under section 23, payment is required to be made as per market value of the land as it stood on the day on which section 4 notification was issued plus an amount of 15 per cent of the market value in consideration of compulsory nature of acquisition. There is no doubt that the Act needs revision. Thacker Committee appointed by the Housing Ministers Conference also criticized the Act and even the Third Five Year Plan refers to the lengthy and time consuming procedure for acquisition of land for slum areas. The quantum of compensation provided in the Act is yet another factor which impedes urban development as large sums of money are required to acquire land at its market value. Under the twentyfifth amendment to the Constitution the expression "compensation" in Article 31 was substituted by the term "amount". It also added a new clause, *viz.*, Article 31C giving unrestricted powers to Parliament to give effect to the Directive Principles of States Policy contained in Article 39 of the Constitution. Inspite of this the land acquisition awards continue to be on the basis of market price as it stood on the date of Section 4 notification. The Land Acquisition Act, 1894 being a pre-constitutional piece of Legislation is not required to satisfy the requirements of Constitutional provisions. The situation has been summed up by Balachandran in his paper on 'Land Acquisition and Implementation of Development Plans' in the following words: "It is unfortunate that the enthusiasm with which the historic twentyfifth amendment was passed through the Parliament, has faded away soon

after the Amendments came into effect. If follow-up legislations consequent to the Amendment are not enacted, the blame is not on the judiciary but on the legislature. When the amendment enables the state to pay less than the market value by way of compensation for compulsory acquisition of property where it cannot afford to pay full market value, there is no reason for not carrying out the required amendment in the acquisition laws. It is high time that suitable amendment are made in the various laws dealing with the acquisition of property starting from the original Land Acquisition Act of 1894 and covering up the Development Acts for the speedy implementation of the plans.

Yet another point: The existing procedure for acquisition under the Land Acquisition Act is too dilatory and time-consuming and does not suit the requirements of the development plans. Some of the Development Acts, as has already been pointed out, have made provisions for the constitution of tribunals and their decisions in matters of acquisitions are made final. The Supreme Court in *Sarwan Singh's* case has upheld this provision and held that 'the legislature by making the order of the tribunal final, seeks to avoid delay in the course of litigation to defeat the purposes of scheme framed under the (Town Improvement) Act'.

One of the main advantages of tribunal is that they are quicker in setting disputes than the ordinary courts and they are in a better position to avail of the special knowledge of experts in the field. It is, therefore, suggested that necessary amendments may be made in the Development Acts so as to exclude the jurisdiction of the courts in the matters of acquisition by creating tribunals comprising of efficient experts in the area."[10]

Town Planning Legislations

The law is now well settled that the State legislature has got the power to enact town planning legislations. It is also held that the central legislature also has the authority under the Concurrent List to enact town planning legislations. The legislations dealing with planning and development may be broadly classified under three different heads:

1. Municipal Acts,
2. Improvement Trust Acts, and

3. Town Planning and Development Acts.

Municipal Acts

The municipal acts contain many provisions controlling development of land and building activity, licensing of trades and factories, prohibiting public nuisance and pollution, demolition of ruinous and dangerous structures, construction of water, sewerage and public drains, etc. These provisions are limited to the jurisdictions of municipalities and cannot apply to areas outside their jurisdiction. Many times municipalities are blamed for not implementing these effectively. Examination of procedures involved and possible penalties that can be levied will bring out the reason for their non-effectiveness. To illustrate this point I will take only one example of the provisions of law to check unauthorised structures and quote from a paper on 'The Problems of Unauthorised Construction in Delhi'.

"If one morning, while going to the Town Hall, I discovered some people putting up what is obviously an unauthorised building, I can be little more than a pathetic spectator. I am required under section 343 read with section 344 of the Delhi Municipal Corporation Act 1957, as amended from time to time, first to give the builder a 3 days 'show-cause' notice. If I find the builder's reply to be unsatisfactory, I must give him another notice specifying a time-limit of not less than five days within which he must demolish the structure. If he does not comply with the requirements of the second notice, I can ask my demolition gang to pull down the building. But if the builder is not cooperative enough and has locked the house in the meantime, I must serve on him a 'lock-breaking' notice of at least twenty four hours duration. It is only the most resourceless builder who will, during all this time, not bestir himself and obtain a stay order. Formerly the law considered a twenty-four hours notice followed by a six-hour compliance notice quite sufficient for the purpose. The Corporation suggested an amendment to arm its officers with greater and swifter powers. Parliament, on the other hand, increased the time limit to a minimum of five days before a structure could be demolished after a show cause notice. The period of nervous helplessness of the Corporation staff has thus been increased substantially

while the builder goes on blithely with his construction. If there is a long weekend which we get on the second Saturday of every month, there are experts in the capital who undertake to put up a modest two-room semi-permanent house before the office opens on Monday. During the period of immunity granted by the law, the builder has not lost time but has in the meantime made all attempts to win over the official and the influential members and social workers of the locality. If he fails in these attempts, he tries to secure an injunction from court of law. It is only when the injunction is not forthcoming that the house is at last ready for demolition."[12] The provisions and penalties governing development and selling of virgin land are equally ineffective.

Improvement Trust Acts

The inadequacy of municipal laws as applied to urban development was felt quite early in our country and it was as far back as 1898 that attempts at town development came in the form of Town Improvement Act of Bombay. It was followed up in 1911 in Calcutta and in 1919 in U.P. and thereafter a number of enactments in other parts of the country came up. Unlike Municipal Acts, the jurisdiction of Improvement Authorities is not limited to municipal boundaries of an existing city but can be extended to include peripheral areas by preparing town expansion and Improvement Schemes indicating use and re-use of land including land acquisition, redevelopment and disposal. Under these Acts it was not necessary to prepare a Master Plan for the city or region. Any action programme for specific areas could be formulated and implemented. These Acts as such suffered from a main drawback, *viz.*, they did not take an overall picture of the city or regions of development. Efforts were then made to combine Town Planning and Improvement Trusts under one legislation as in Bihar, Orissa and Rajasthan. Separate Town Planning Legislations were also enacted as in Bombay in 1915 and in Madras in 1920. The one in Bombay was revised in 1954 and the same has been replaced by Maharashtra Regional and Town Planning Act, 1966.

Model Town and Country Planning Law

A model Town and Country Planning law was approved by

the Second Conference of State Ministers on Town and Country Planning held in 1962. Many states revised their existing town planning legislations and enacted comprehensive legislations for urban planning and development. Kutty in his paper on 'Administrative Vacuum in Indian Planning Law' points out that the Model Law puts great emphasis on legislation for the enforcement of control on land use and development rather than on promotion of economic growth. More important factor is complete lack of any provision for setting up of machinery for the implementation of urban and regional plans.[13] Anatole A. Sollow, Associate Professor of Urban and Regional Planning, University of Pittsburgh in his contribution to the symposium on 'Urbanization in Developing Countries' held in December 1967 at Noordwijk, Netherlands pointed out that in many countries it was not a lack of legislation in this field but rather that a great many laws were unrealistically designed and could not be implemented. The weakest point of Model Town Planning Law and Town Planning Legislations has been to treat planning and implementation as two separate entities and therefore entrusted to different authorities. The planners feel diffident to implement the plans created by them mainly perhaps because they lack the training and practical experience in that context. Besides, it also gives an opportunity to pass on the criticism elsewhere if the implementation authorities are different. This has the tendency to make planning dilatory and unreal. On the other hand even implementation authorities work in a fragmented and disjointed manner since the responsibilities get divided amongst municipal body, improvement trust or development authority, water, sewerage and electric supply undertakings, housing board, transport corporation, etc.

Taxation Laws

Generally, the municipal bodies in our country have levied taxes on property, octroi, terminal and toll tax, taxes on trades, animals and vehicles (other than motor vehicles). The other two levies which the local authorities often mention but fail to realize are 'betterment charges' and 'unearned increment tax on land'. Betterment charge or levy is a tax on 'the increase in urban land values due to execution of improvement works'.

Delhi and Madras inspite of repeated efforts have not been able to levy and recover the betterment levy, mainly because it is difficult to determine and establish the quantum of increase in the value of urban land only on account of improvement works like, laying a sewer, providing a parking lot, etc. Regarding unearned increment tax on land, it may be mentioned that the third five year plan, with reference to housing, pronounced the objective of 'control of urban land values through public acquisition of land and appropriate fiscal policies.' The idea was to mop up unearned profits made by land owners arising out of speculation in land. The Committee of Ministers constituted in 1965 by the Central Council of Local Self-Government on Augmentation of Financial Resources of Urban Local Bodies observed: "In all advanced countries a system of progressive taxation for mopping up such unearned increments in property values is already in existence. For example in U.S.A., an annual tax of one thousand dollars is levied on every acre of valued at 50,000 dollars. The owner has to pay another thousand dollars per year if the land value doubles, *i.e.*, about 2 per cent of the increase in capital value. In U.K., increment value duty on site value was collected as early as in 1910". The committee accordingly approved the following suggestion that "the best way to make an impact on rising urban land prices — is to levy an annual tax on such unearned increments.—. for determining the annual tax liability periodical assessment of urban land and properties will have to be undertaken and the tax liability determined for the period intervening between two assessments".

The Urban Land (Ceiling and Regulation) Act 1976

The purpose of this Act as given in the Statement of Objects and Reasons reads as under:

"There has been a demand for imposing a ceiling on urban property also, especially after the imposition of a ceiling on agricultural lands by the State Governments. With growth of population and increasing urbanization, a need for orderly development of urban areas has also been felt. It is, therefore, considered necessary to take measures for exercising social control over the scarce resource of urban land with a view to ensuring its equitable distribution amongst the various sections

of society and also avoiding speculative transactions relating to land in urban agglomerations.

The Bill is intended to achieve the following objectives:

(*i*) To prevent concentration of urban property in the hands of a few persons and speculation and profiteering therein;

(*ii*) to bring about ~~specialization~~ socialization of urban land in urban agglomerations to subserve the common good by ensuring its equitable distribution;

(*iii*) to discourage construction of luxury housing leading to conspicuous consumption of scarce building materials and to ensure the equitable utilization of such materials; and

(*iv*) to secure orderly urbanization".[14]

The Act lays down four categories of urban agglomeration. Class A urban agglomeration has a ceiling limit of 500 sq. metres. Class B 1000 sq. metres, Class C 1500 sq. metres and Class D urban agglomeration has a ceiling limit of 2000 sq. metres. Returns of excess urban land are to be filed within prescribed periods under Rule 3 which in turn has a bearing on Sections 6, 19 and 20 of the Act. The State Governments have powers to exempt any vacant land in public interest and also in cases where such exemption is considered to be necessary to avoid undue hardship to any person. The Bill thus provides a ceiling on both ownership and possession of vacant land in urban agglomerations according to categories mentioned above. It also gives powers to State Governments to acquire vacant land on payment of an amount equal to eight and one-third times the net average annual income actually derived during the period of preceding five consecutive years or in a case where no income is derived from such vacant land, an amount calculated at a rate not exceeding Rs. 10 per sq. metre in cases of categories A&B and at a rate not exceeding Rs. 5 per sq. metre in cases of categories C & D. The payment of such amounts can be made in cash and in bonds. It also regulates the transfer of vacant land within the ceiling limits, transfer of urban or urbanizable land with any building (whether constructed before or after the commencement of the proposed legislation) for a period of 10 years from the commencement of the legislation of the construction of the building, whichever is later and also restricts the

plinth areas for construction of future residential buildings to be not more than 300 sq. metres in respect of urban agglomeration of categories A & B and not more than 500 sq. metres for categories C and D. The Act also lays down a provision of constituting Urban Land Tribunals for entertaining appeals if any person is aggrieved by an order of the competent authority. The second appeal, subject to the provisions of the Code of Civil Procedure, 1908, shall however lie to the High Court from the decision of the Tribunal.

It will be seen from above that the Urban Land Ceiling Act has taken adequate care to see that not only the long drawn delays are avoided but even the quantum and mode of payment is quite convenient. It truly exercises social control over urban land. It has now to be ensured that appropriate machinery is set up to see to equitable distribution amongst various sections of society and stop speculative transactions. The utility of the Act in Urban Development Programmes will however be limited to the extent of the definition of 'vacant land' as provided in the Act. Since this definition excludes land on which construction of building is not permissible under the building regulations in force in the area, the land earmarked for important urban infrastructure like roads, water supply and sewage treatment plants bus depots, parking lots, open spaces, parks, playground and master plan greens will have to be acquired under different laws and Acts. It will also affect the existing densities in built-up areas and cause some congestion and strain on already overloaded services. But the object to be achieved is so laudable that these factors are only small pinpricks which can be put up with and in some cases even remedied. A few states have already taken steps to implement even the complementary measures of taxation. West Bengal has enacted the West Bengal Urban Land Taxation Act 1976 which provides for levy of urban land tax, development charges, conversion charges and prohibiting conversion of agricultural land to non-agricultural use.

The Act raises many interesting issues foremost being the provisions of Section 21(1) for permitting to hold vacant land in excess of the ceiling limit for construction of dwelling units having an area of not more than 80 sq. metres for weaker sections of society. As far as defining weaker sections of society

is concerned, the Finance Minister in his proposals for tax relief announced on March 15, 1976 provided the indication as can be seen from the extract reproduced below:

> "There is acute shortage of housing, particularly of the kind required by the poorer sections of the community. House construction is entitled to be treated as a major industry in its own right. Apart from fulfilling the basic human need for shelter, it generates considerable employment, both direct and indirect. Increased activity in this sector will also improve the demand for materials like cement, steel and coal for making bricks. To attract more resources for this neglected but essential purpose, I propose to exempt new dwelling units put up after Ist April, 1976 with a plinth area upto 80 sq. metres from wealth-tax for a period of five years. Initial depreciation allowance of 20 per cent will hereafter be available in respect of houses constructed by employers for use as residence of low-paid employees having annual salary income up to Rs. 10,000 instead of Rs. 7,500 as at present."[15]

Besides this every state will have to make its own decisions on issues like ceiling cost, plinth area rates, percentage return, monthly rental, etc. Since the conditions would vary from State to State, it would be a difficult task to evolve uniform guidelines for this purpose. As an important objective of the Act is to step up the housing stock in the country, it would be desirable to prescribe terms and conditions which should be attractive enough to encourage private housing activity on such lands, unless the government has a more vital use for it.

There was some criticism in the beginning that due to the Act the building activity had come to a standstill. This impression was perhaps not fully justified. There might have been a pause in the beginning, but the Government acted swiftly and by holding high level meetings and issuing guidelines and clarifications, ensured that all construction and development proposals not affected by the Act were not held up.

Utilization of small pieces of land left over from plots marginally above the ceiling limits prescribed, is yet another teaser. Fear is also expressed that in cities where large tracts of land situated at or near the periphery indicated as agricultural land in the master plans for those cities, agricultural produce

might suffer since such land has become urban or urbanizable under the Act. Holders of such land could be encouraged to utilize the same till such time the land is taken over for urban development. However, it would be desirable to step up the programme of developing barren lands and make the same fit for agricultural purpose. A quick decision is also needed as to which cultivation/activity should be excluded from the definition of 'agriculture'. Poultry, dairy and stud farms, mango groves and other fruit bearing trees if excluded from this definition can cause scarcity and step up prices of these commodities.

Building Bye-Laws

The existing building bye-laws in most of the towns are framed on the concept of 'garden cities'. In view of the objectives indicated in the Urban Land Ceiling Act, these norms will have to undergo changes. Some of us, who have seen how difficult it is to implement and maintain the concept of a 'garden city' in fast growing urban areas, find it difficult to change and adjust to this wilful lowering of standards. But the attitudes have to change. We also consume lot of space in stairs, passages, kitchens, etc., and now that there are plinth area restrictions, it would be desirable to amend building bye-laws keeping in view the whole question of preventing luxury constructions and ensuring modest but comfortable homes and equitable distribution of land. However, multi-storeyed buildings and group housing schemes will need a different approach and if they are allowed to retain only a small area of 'land appurtenant' around these, the environment is bound to deteriorate.

Urban Art Commissions

Even a properly planned and developed city can be ruined aesthetically if proper control over street furniture, hoardings, elevations of main structures, etc., is overlooked. With a view to control aesthetic quality of urban environment it is essential to establish Urban Art Commissions. In U.K. and U.S.A., the Commissions are called Fine Art Commissions. Such titles, in the beginning, had confused and misled people to think that they were only meant for painting, sculpture and other similar

fine Arts. To avoid such doubts, the word urban was considered essential. For the first time such a Commission has been established in our country in Delhi by the Government of India under the Act of Parliament, namely, the Delhi Urban Art Commission Act, 1973 (1 of 1974). The Act came into force with effect from Ist May, 1974. Following are the objectives of the Commission:

1. To promote those qualities in the environment which bring value to the community.
2. To foster the attractiveness and functional utility of the community as a place to live and work.
3. To preserve the character and quality of our heritage by maintaining the integrity of those areas which have a discernible character or are of special historical significance.
4. To protect certain public investments in the area.
5. To prevent bad design and encourage good.
6. To raise the level of community expectations for the quality of its environment.[16]

The main responsibilities of the Commission are:

(*i*) To advise the Central Government in the matter of preserving, developing and maintaining the aesthetic quality of urban and environmental design of Delhi;

(*ii*) And also to advise the local authorities in respect of any project of building and engineering operation or any development proposal which affects or is likely to affect the aesthetic quality of the surroundings or any public amenity provided therein.

The Commission has wide powers and it can on its own initiative direct the local bodies and Government organizations to modify or remove any existing street furniture, additions and alterations made in historical monuments/features situated in public gardens, hoardings, sign/bill boards, fountains, etc., which in the opinion of the Commission are objectionable either from aesthetic considerations or civic/functional design aspect. The Commission shall also advise the Central Government and local bodies on matters of aesthetic quality of urban and environmental design whenever specially referred to it. The Commission may also promote and secure the development/redevelopment or beautification of any area in Delhi in respect of which no proposals on that behalf have been received from any local

body (Chapter III-11 (3) of the Act).

In its first annual report 1974-75, the Delhi Urban Art Commission came out with scathing criticism of local bodies and Government agencies. It even expressed doubts about the mechanism and power of the Commission in case its suggestions/directives were not implemented. The report observes: "The Commission's efforts to get certain ugly and undesirable street furniture, sign-boards/hoardings and similar elements, that destroy the visual quality of the city-scape, changed or removed have not met with much success. Various types of excuses and resistances are offered. Firstly, there is considerable apathy to make any change; secondly we are told by the authorities that there are no funds to undertake any change or removal, and they cannot afford to lose the revenue in case of commercial hoardings. According to the Act, it is mandatory for the local bodies and Government organisations to respect and follow the suggestions and directives of the Commission. However, it is not very clear to us as to what would be the mechanism and power to enforce the directives of the Commission in cases where its suggestions/directives are not implemented on one excuse or the other".[17]

On the other hand views of the local bodies and other Government agencies about the Delhi Urban Art Commission came to surface in a press report on 19th October 1975 under a heading 'Heat Over Arts and Panel Reports'. The report reads thus: "The first annual report of the Delhi Urban Arts Commission, which has criticised the civic bodies for their indifference to 'visual squalor in the city' has evoked sharp reactions from the civic officials. A number of them said that 'certain high officials' in the UAC before joining the Commission were employed in these civic bodies and were responsible for designing the buildings they now describe as 'monstrous'."

Delhi Development Authority Vice-Chairman Jagmohan said that the Commission should confine itself to laying guidelines, study the plans of 'monumental buildings' and sensitive areas and not 'nibble at' every small problem. The DDA's Nehru Centre, near Kalkaji has come in for strictures and the Commission has said though the project was conceived 10 years ago, DDA had prepared no project report. Shri Jagmohan denied this and argued that no two architects could think alike.

They were determined to stick by certain features, which the Commission had criticized. The Commission's criticism that architects in Government organizations were subordinate to engineers did not hold good in DDA's case. It was not possible to attract talented architects because of the low government salaries offered, he said.

Municipal Commissioner Shri B.R. Tamta said though the Commission was quick to point out flaws, it was not prepared to say what should be done. Practical difficulties were overlooked by the Commission. For instance, though the Commission had criticised the various designs of lamp posts, it chose to overlook the fact that different designs had to be accepted because of varying conditions in the localities. The overhead cables too had attracted criticism. But enormous cost and labour was involved in laying underground cables.

The municipal hoardings, which the Commission had assailed, were a source of revenue to the corporation. They had, however, reduced the sites to 450 and confiscated 900 hoardings.

CPWD Chief Engineer Shri V.R. Vaish, replying to the criticism of the standard of maintenance by the department, said the Commission seemed unaware of the fact that due to economy the CPWD had not been sanctioned any money during the last three years for repair work.

As for water towers, described by the Commission as "ugly", the Municipal Corporation's instructions were to build them, otherwise it would not be possible to maintain the water supply.[18]

Such thoughtful comments on either side are bound to arise. "Some feel that setting up of such Commission would mean yet another hurdle which a citizen will have to cross. Others more artistic point out that although greatest industrial achievements do emerge from committees but certainly not the greatest painting, sculpture or other such pieces of art. They point out that 'artists do not come in teams'. The more seasoned, however, feel that artistic control over environment is always desirable and that even an artistically imperfect control will have better results than no control at all. Good architecture would become meaningless if surrounded by a framework which is not consistent with its conception. The

majestic Red Fort would lose its royal stature if permitted to be surrounded by modern match box structures."[19]

Conclusions

(1) It is not because of dearth of law or lack of legal knowledge that we see fellow human beings live in veritable pig-sites jammed like fish in a barrel in the midst of filth and stink and disease and without amenities. "Much can be achieved by phased provision of community facilities and services, by gradual improvement in the physical environments, by purposeful planning of colonies with simple yet useful structures, by reorienting our economic policies to remove the imbalance in our society. And with these steps we can face with courage and confidence the twin challenge of urbanization and abysmal poverty".[20] Our attempt should never be to plan 'Garden Cities' at exhorbitant cost but to avoid congestion and create an atmosphere in which human beings can breathe free and have the basic necessities.

(2) The Urban Land Ceiling Act 1976, makes available the necessary tools for acquiring vacant urban land quickly and at convenient costs. The Act, however, has its limitation regarding lands which are not covered under the definition 'vacant'.

(3) Follow-up legislations consequent to the twenty-fifth amendment to the Constitution may be expedited to facilitate acquisition of urban land other than 'vacant' with a provision of ceiling on the inflated urban land prices and issue of public bonds.

(4) In the alternative, the feasibility of having a separate legislation for urban land acquisition can be considered.

(5) Decision on issues like ceiling costs, percentage returns, monthly rentals are to be expedited so that projects for weaker sections/societies as envisaged in the Urban Land Ceiling Act get going.

(6) Delays due to non-handing over of title due to quantum of acquisition taking long time to settle, could be avoided by suitably amending the Land Acquisition Act so that title of land could be transferred without prejudice to the rights of the owner.

(7) Bolivia has a condemnation law applicable to urban area of La Paz. Such a law permits to condemn land for a

particular public use like, low-cost housing projects, water supply treatment plants, right of ways, etc., and pays only partial compensation in cash and remainder in bonds. Similar proposals could be examined. Usually in such cases the authority is vested in separate authorities but it would be advisable to centralise public acquisition and development in a single agency.

(8) Land Banks may be established so that execution of urban development plans is not held up for want of land.

(9) We may also consider acquiring the right to develop the land if the land itself cannot be acquired by public authority.

(10) Controls like zoning regulations, subdivision rules, building bye-laws and authority to approve layouts are means of directing urban growth. These techniques which are negative restrictions on the use and development of land has been borrowed from advanced countries specially U.S.A. where itself their adequacy is being questioned. Many times it is seen that the standards set in these regulations are very high and the same may be suitable for affluent societies but certainly not for settlement patterns of low income families. Such standards need modifications.

(11) Suitable amendments may be made to the municipal enactments to see that the laws are swift and sufficiently punitive with a view to have effective building and development control in urban areas.

(12) Adequate machinery to implement the existing town planning Acts should be created and adequate training should be provided to planners so that they can effectively implement the plans they prepare.

(13) Laws of taxation have to be improved so that "betterment charges" and "unearned increment tax on land" are easily recoverable.

(14) Revision of building bye-laws is a must to bring them in conformity with the underlying principles of Urban Land Ceiling Act.

(15) Establishment of Urban Art Commission, specially in major cities, is a welcome step as it results in artistic control over urban environment.

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LAND ACQUISITION IN THE CONTEXT OF URBAN PLANNING: SOME SUGGESTIONS FOR PROCEDURAL REFORMS

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It is common knowledge that urban planning involves large-scale acquisition of land. The land acquisition proceedings should not entail delays so that the work of urban planning is not hampered and the urban development programmes not retarded. On the other hand, the procedures for land acquisition have to be fair from the point of view of the individual to ensure that power of land acquisition is exercised for purposes for which it is meant and the authorities do not act arbitrarily. There is an age-old conflict between procedural safeguards and administrative efficiency. The procedures have, therefore, to be such that are both just from the point of the individual and at the same time do not unduly hamper the task of urban planning.

The Land Acquisition Act, as we all know, is an old statute enacted in an era well before the advent of large scale planning. The procedure provided under the Act, which is the main statute relating to land acquisition in the country, has been described as "lengthy and time consuming,"[1] and has often held up the implementation of important schemes of slum clearance, housing, town planning, etc. Inspite of this criticism we have not yet been successful in evolving a procedural scheme which is both expeditious and at the same time fair to the individual, though several committees have gone into the question. To

[1] *Third Five-Year Plan* 687.

mention a few of such committees, the following may be stated:

(*i*) Law Commission rendered its report on Land Acquisition Act in 1958;

(*ii*) Thacker Committee on Integration of Urban Housing Schemes and Land Acquisition Proceedings reported in 1965;

(*iii*) Group of Experts on Land Acquisition made a report in 1967;

(*iv*) The Mulla Committee made a comprehensive report on the Act in 1970.

A brief mention of the basic statutory framework of the land acquisition may be in order. The proceedings for land acquisition commence with a preliminary notification by the government under section 4(1) which is issued when it appears to the government that land in any locality is needed or is likely to be needed for a public purpose. It is to be published in the official gazette. The Collector is to give public notice of the substance of the notification at convenient places in the concerned locality. Subsequent to this notification, government officials can carry out survey of the land in question by giving a minimum of seven days' notice to the occupier of any building or garden on the land in question. The compensation for any damage resulting from such survey is payable and the decision of the Collector on the amount payable is final. The next stage in the process of acquisition is the hearing of objections against the proposed acquisition. Any interested person may within 30 days of the issue of section 4(1) notification, file objections with the Collector against the acquisition. The Collector is to provide to the objector fair-hearing either in person or by pleader. After hearing the objections and making any *suo motu* inquiry, the Collector is required to make a report in respect of the land along with his recommendations on the objections. The decision of the government on the objections is final. On considering the Collector's report if the government is satisfied that land is needed for a public purpose, or for a company, a declaration to the effect is made by the government under section 6. Different declarations may be made for different pieces of land. However, no declaration under section (1) is to be made after the expiry of three years from the date

of publication of the notification under section 4(1). The declaration has to give particulars for identifying the land by location or area and the purpose for which it is needed. This declaration is conclusive evidence that land is needed for a public purpose or for a company. After the notification under section 6, the Collector notifies individually and publicly that the government intends to take possession of the land and that claims for compensation may be filed with him by all persons interested in the land within 15 days. The Collector is then to hold an inquiry and make an award as to the compensation payable for the land acquired. Such an award is final subject to the fact that if any interested person requires the Collector to refer the matter to the court, he has to refer it. There is an elaborate procedure for making an award and a public notice to that effect and individual notices to the interested persons have to be issued. The Government can take possession of the land on the award having been made by the Collector, and it is not necessary to wait for the decision of the court or actual payment of the amount in terms of the award of compensation. Under the Act compensation is the market value of the land on the date of publication of the preliminary notification subject to certain additions for various damages and a 15 per cent solatium on the market value.

The Act empowers the government to expedite the procedure for acquisition in times of urgency. In the case of "arable or waste land" when the urgency of the situation so demands, the government may direct that the stage of hearing of objections under section 5A need not be undergone. In such a situation the notification under section 6 may follow the notification under section 4 almost simultaneously without the intermediate stage of hearing the objections under section 5A. Normally the Collector is to take possession of the land after the award has been made but in case of urgency and in case of "arable or waste land" the government may direct that possession be taken by the Collector though no award has been made.

The Act also empowers the government to acquire land for companies at their cost for purposes specified in section 40(1) and for such acquisitions the provisions of Part VII consisting of sections 38 to 44B are applicable. No land will be acquired for the company unless the previous consent of the government

has been obtained and unless an agreement in terms of section 41 has been executed by the company.

Administrative procedure is an important aspect of land acquisition. The Act confers wide powers on the administration to acquire land for any purpose. The courts are helpless in the matter of declaration of the government that a particular land is needed for a public purpose, firstly because section 6 gives finality to such a declaration (The Act, being an Act prior to 1950, is saved from unconstitutionality under Article 31 inspite of this provision for finality), and secondly, because the term "public purpose" is a very wide one which could cover any purpose under its umbrella. The only safeguard for the individual is in administrative procedure. In considering the procedure for land acquisition, it is necessary to reconcile the two competing conflicts of interest—acquisition of land for the benefit of the public without much delay, and the other, providing fairness to the individual.

Telescoping of the Two Stages

There are two major stages involved in the acquisition process. The first one is the process of declaration that a particular land is needed for a public purpose and the second one is the process of awarding compensation.

A commonly heard grievance is that the whole procedure prescribed is dilatory and time consuming. At times it is suggested that the two stages may be telescoped into one. It is our view that this should not be done. Each stage involves questions of entirely different nature. The first stage involves the exercise of a discretionary or subjective power. Whether a piece of land is needed for a public purpose is a matter of policy. This power will necessarily have to be left with the administration. The second stage of compensation is, however, not discretionary. The amount of compensation to be paid requires objective determination of the question. This matter cannot be completely left in the hands of the administration and at some stage some impartial body will have to be involved in adjudicating the amount of compensation. Therefore, it is necessary to keep the two stages separate and distinct.

Declaration that the Land is Needed for a Public Purpose

The Act provides a minimal procedure from the point of

view of fairness to the individual for taking a decision whether land is to be acquired for a public purpose or not. It may not be possible to reduce this minimal in order to expedite land acquisition proceedings. The procedures contained in sections 4 to 6 embody the principles of natural justice or fair hearing to be given to the affected persons. Fairness requires that at least a person whose land is being acquired should be given a reasonable opportunity of being heard so that the mind of the administration is fully informed as to the pros and cons of the administrative action and there are less chances of wrong action being taken. The concept of fair hearing is a flexible one. Fair hearing does not entail formal or court-type proceedings. Fair hearing does reconcile the need for hearing to be given to an individual with the necessity of expeditious disposal of a case from the point of the administration. Even the Mulla Committee has not recommended any modification in the present procedural safeguard of providing a hearing to the affected individuals. The Committee, however, recommended an overall time-limit from the date of issue of notification under section 4(1) up to the date of reference to the court to be presented. This may by itself not solve the problem for the basic reason of the delay in the proceedings is the slow governmental machinery. A statutorily prescribed time-limit may give rise to various legal complications. Even the courts may hold such a time-limit to be merely directory and not mandatory.

The basic problem is to evolve a mechanism by which the task of the already overburdened Collector is lessened. This could be done by taking the function of hearing from the collector and entrusting the task to independent hearing officers, who would be in a position to give priority to land acquisition proceedings over their other work. Perhaps, it may be better to eliminate completely the Collector for purposes of sections 5 and 6. The hearing officers may make their report directly to the government.

In England, it may be noted, there are full time inspectors who usually conduct such enquiries. Sometimes they are outside the control of the department concerned. The Franks Committee has commented on the position as it is prevalent in England thus :

"The Ministry of Housing and Local Government, which is

responsible for most of the enquiries within our terms of reference, has its own staff of qualified inspectors, and certain other Departments employ these inspectors on loan for the enquires for which they are responsible. The Ministry of Education, the Ministry of Transport and Civil Aviation and the Scottish Departments almost invariably appoint persons from outside the public service to conduct their enquiries. The Ministry of Education for the most part appoints independent surveyors, the Ministry of Transport mostly employs independent technical experts or technical officers who have retired from the Department, and the Scottish Departments mostly employ lawyers. The difference of practice arises to some extent because these latter Departments prefer their enquiries to be conducted by persons from outside the public service and to some extent because the volume of work does not justify their employing a permanent staff of department inspectors".

The Administrative Procedure Act in U.S.A. also makes a provision for independent hearing officers. Section 11 provides :

"Subject to the civil service and other laws to the extent not inconsistent with the Act, there shall be appointed by and for each agency as many qualified and competent examiners as may be necessary for proceedings pursuant to sections 7 and 8, who shall be assigned cases in rotation so far as practicable and shall perform no duties inconsistent with their duties and responsibilities as examiners."

If independent hearing officers are appointed they would expeditiously dispose of the cases. Long delay at present occurs because the Collectors have often to decide the matter of land acquisition along with other multifarious functions. Further, appointment of independent hearing officers will inspire public confidence in the whole process. This suggestion for appointing full-time independent hearing officers is not entirely new for India. It is common knowledge that in respect of disciplinary enquiry against government servants under Article 311, the Enquiry Officers are the Commissioners of Departmental Enquiry of the Vigilance Commission. These Commissioners are appointed either from the civil service or the judiciary.

The recommendations of the hearing officers should be made available to the affected interests. Prior to the stage of declaration by the government under section 6, an individual should be given an opportunity to offer comments on the recommendations of the hearing officer. If the Government has acquired further evidence after the completion of enquiry by the hearing officer, it should be known to the individuals. This is the procedure followed in England and the United States. In this connection, it may be pointed out that the Supreme Court has held that the function to acquire land is administrative and that the Government is not bound to give hearing to the parties before making a declaration acquiring land, even though the report of collector is against the acquisition.[2] However, inspite of that ruling of the Supreme Court, which is based on the statutory provisions, it is but fair that individual should be given an opportunity to make written submissions on the recommendations of the hearing officer.

The hearing procedure is so essential from the point of view of fairness to the individual that even in urgency it should not be lightly dispensed with. It should be bypassed only in rare and emergent cases. Often it is said that the Government resorts to section 17 liberally. As a safeguard against abuse of powers by the administration, it may be necessary to incorporate provisions requiring the administration to specify adequate reasons for dispensing with section 5(A) enquiry.

A few other points may be made for improving the procedures, though these may have nothing to do with the time element as such. Under the existing law it is not necessary to serve section 4(1) notification individually. It is not fair to the individual whose land is being acquired. Something like the present section 9(3) may have to be adopted in this connection. In England also the position seems to be to serve initial notice to owners, lessees and occupiers of land.

Further, as the law stands presently, it is not necessary to mention the public purpose for which the land is proposed to be acquired under section 4 notification. This is again unfair to the individual. In the absence of this information, it may not be possible for an objector to effectively argue against the

[2] *Abdul Husain* v. *State of Gujarat*, A.I.R. 1968 S.C. 432.

acquisition. Apart from this, it is essential to state the exact area of land to be acquired so that excess land is not unnecessarily frozen.

An important point was made by the Mulla Committee that there should be a distinction between the normal cases of acquisition, namely, acquisition of only small areas of land for certain public purposes and projects for which large areas of land are required as, for example, urban planning schemes, big irrigation projects, etc. In the latter case, the Government should issue a project notification specifying the project area as soon as it decides to acquire the land for the purpose. The project notification should precede the notification under section 4(1) by about two or three years (Mulla Committee's time-limit is two years).[3] The advantage of this step would be that once the project notification is issued the Collector can empower the officials to do the preliminary survey of the land, correct selection of land and other incidental matters in connection with the acquisition. As effective pre-planning is essential for smooth implementation of urban planning schemes the project notification would make it incumbent on the government machinery to carry out the process within the stipulated time prior to the issue of section 4(1) notification which is the relevant date for purposes of determining compensation. Further, this would obviate the necessity of surveys and other administrative measures envisaged in section 4(2) and section 8 of the Act. To this extent, time will be saved.

The distinction between the two types of acquisition would serve dual purpose. Firstly, it will give sufficient time to the acquiring authority for planning and survey of the area. Secondly, it will check speculative rise in land prices in as much as the speculative rise in land price takes place after the intention of the Government becomes known to the public and there is a big time-lag between expression of this intention and the first notification under section 4(1).[4]

Procedure to Award Compensation

It is common complaint that the procedure to finalise

[3]Mulla Committee Report, Chapter 7, para 7.28, p. 117 (1970).
[4]*Ibid*, para 7.29, p. 117.

compensation is tardy. Under the Act the land cannot be taken possession of by the government unless the collector has made the award which is quite time consuming. The delay in getting compensation is also a major cause of dissatisfaction for the individual. It is necessary to have a procedure which is both expeditious and fair to the individual.

Subsequent to the notification under section 6, the Collector is required under section 9(1) to give public notice to interested persons to file claims for compensation and objections for measurements of land, etc., within fifteen days. In addition, he is to give individual notices as well as under section 9(3). It is difficult to understand the rationale behind public notice at this advanced stage of acquisition process. In our opinion, individual notice should be sufficient to comply with the norms of fair hearing because the persons adversely affected would ordinarily be expected to be articulate with their claims for compensation by that time. The necessity for public notice arises only at the stage of section 4(1) notification and the statutory provision does contain a requirement to that effect. Thus, after giving individual notice the collector should be empowered to estimate the amount of compensation after such enquiry as he deems fit. The idea is that the procedure be quite informal and the whole approach may have to be such as to avoid further litigation. If there is agreement on the amount of compensation, the Collector should record the agreement and tender the estimated amount of compensation to the interested parties. In the absence of such agreement on the estimated amount of compensation, we suggest that, instead of reference to civil court by the Collector, land compensation tribunals be set up to hear appeals against the decision of the Collector. The establishment of the tribunal, it is hoped, would facilitate the expeditious disposal of cases. In course of time, the tribunal will acquire sufficient expertise for determining the correct amount of compensation and also for quick disposal of cases. An analogy may be found in the Lands Tribunal Act, 1949. This tribunal decides questions of disputed compensation under the Land Compensation Act, 1961 in matters of compulsory land acquisition. The Lands Tribunal is appointed by the Lord Chancellor and consists of a President and such other members as the Lord Chancellor may determine. The President

must be a person trained in law (who has held judicial office or a barrister-at-law of seven years standing) and the other persons must be experienced valuers of land appointed after consultation with the President of the Royal Institution of Chartered Surveyors. The tribunal sits in public and the decision of the tribunal must be made in writing accompanied by a statement of reasons for the decision. The decision of the tribunal is final except that there is an appeal on points of law to the Court of Appeal.

The Mulla Committee, however, did not favour the setting up of Lands Tribunals corresponding to that in the United Kingdom for the following reasons:

> "It may be recalled that the Lands Tribunal of United Kingdom consist of professional surveyors and valuers as well as legal experts. We are doubtful whether the services of competent surveyors and valuers would be available for assisting the judges at district headquarters in the matter of determination of compensation for acquisition and we are also apprehensive that they are likely to act in the same manner in which the old arbitrators and assessors acted (in a corrupt and partisan manner.) Moreover, the decision of Lands Tribunal in United Kingdom is final save that an appeal can be taken to the Court of Appeal on points of law. On the other hand, under the existing law, as well as under the scheme which we are recommending, we would like to provide for an appeal right up to the Supreme Court subject to constitutional restrictions. We are, therefore, of the opinion that the system of Lands Tribunal would not be suitable for our country."[5]

The Committee's objections were two-fold. Firstly, competent assessors and valuers may not be available. Secondly, these individuals may be currupt. This, however, cannot be the basis for opposing the system of the Lands Tribunal in place of the existing arrangements of the courts having power to adjudicate on disputes of compensation. Under the present system the courts do not associate valuers and assessors in the decision-making process though they may take the help of valuers as expert witnesses. The same arrangement could be followed

[5]Mulla Committee Report, Chapter 6, para 6.53, pp. 101-2 (1970).

in case of the tribunal. Thus in this respect the tribunal would not have none of the disadvantages as compared with the courts. On the other hand, the tribunal being a specialized body exclusively dealing with the land cases will have the advantage of expertise (which will develop in course of time) and expeditious disposal of cases.

In any case, the Mulla Committee's objection to the system of assessors being corrupt or partisan in their approach may be overcome by a provision conferring discretion on the Tribunal whether to take the assistance of assessors or not in a particular case. Not all cases of land valuation would call for expert advice. A provision on the following lines may be made: "The Tribunal may appoint one or more persons as assessors to advise it in the proceedings before it." In fact, the Inter-state Water Disputes Act, 1956, contains a similar provision on the constitution of Water Disputes Tribunal for adjudicating on the inter-state river water disputes. Further, as regards the composition of the tribunal the tribunal may consist of two members —one possessing legal qualifications and the other possessing expertise in land valuation. However, if it is felt that it is difficult to get at present competent and suitable persons with land-valuation qualifications, the government may be given power to appoint a one-member tribunal possessing legal qualification or two-men tribunal as suggested above.

Adjudication of disputes through an administrative tribunal rather than a court is not new in India. It has been tried successfully in various fields and many tribunals are functioning in India. The chief merit of the tribunals is that this system tries to assimilate the legal and other specialized qualifications in the adjudicative process. Even in the field of land compensation matters, the central and state statutes have provided for the setting up of tribunals. For example, the Coal Bearing Areas (Acquisition and Development) Act, 1957 (a Central Act), provides for the constitution of an *ad hoc* tribunal when there is no agreement on the amount of compensation payable. The tribunal consists of a sitting or retired High Court judge or one who is qualified to be appointed as such. In a particular case the Central Government can nominate an expert in mining to assist the Tribunal and in that case the interested person can also nominate any other person for the same purpose. The

tribunal is empowered to make an award against which an aggrieved person can appeal to the High Court. The various State Acts on town improvement also provide for the establishment of compensation tribunals.[6] The tribunal consists of a President who is a legal expert and two assessors and it is deemed to be a court.

Further, the suggestion to set up land compensation tribunals under the Land Acquisition Act is reinforced by the prevalent mood in the country reflected in the Constitution (Forty-second Amendment) Act, 1976, which empowers Parliament to make law for the establishment of tribunals to deal with several matters such as tax, foreign exchange, labour disputes, land reforms, urban ceiling, elections, etc., with appeal to the Supreme Court under Article 136.[7]

[6]Calcutta Improvement Act, 1911, U.P. Town Improvement Act, 1919, Punjab Town Improvement Act, 1922 and the Nagpur Improvement Act, 1936.

[7]Articles 323A and 323B of the Constitution of India.

LAND ACQUISITION LAW: SOME SUGGESTED CHANGES

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The basic law governing acquisition of property in the urban as well as non-urban areas is the Land Acquisition Act, 1894. In addition to this general law, there are a number of specific laws such as the Bombay Town Planning Act, 1954; the Bombay Provincial Municipal Corporations Act, 1948; the Gujarat Town Planning and Urban Development Act, 1976 and the Urban Land (Ceiling & Regulation) Act, 1976. These special laws have limited applicability, the limitations being either of area of jurisdiction or the purpose of acquisition. There is a general feeling that acquisition of lands under the Land Acquisition Act, 1894 is a very time consuming process. The delay in acquisition proceedings many a time frustrates the very purposes for which the land in question is sought to be acquired. The cost of acquisition also some times is so high that the Government and Local Authorities find it difficult to afford acquisition of such lands, however, laudable the purpose of acquisition may be. Further, many a time persons whose lands are under acquisition rush to the civil courts, obtain stay and delay the land acquisition proceedings inordinately. For a considerable time, the feeling has been growing that the law relating to land acquisition should be modified so as to speed up the proceedings and make the acquisition less expensive. The 25th Amendment to the Constitution provides an opportunity to acquire property at amounts below the market rate, particularly in the urban areas. This opportunity should not be allowed to remain unutilized.

It is not necessary to make any new law for acquisition of land in urban areas. The existing Land Acquisition Act, 1894, could be modified suitably to make the acquisition speedy and cheaper. At present under the normal acquisition proceedings

possession of land could be taken only after declaration of award under section 11 of the Land Acquisition Act, 1894 is made and notice under section 12 is given. However, in case of urgency, Government can take possession earlier of vacant land (and not built-up property) by applying the urgency clause at section 4 stage and section 6 stage or at section 6 stage only of the land acquisition proceeding. Thus in normal cases, the possession of the land under acquisition cannot be taken till the land acquisition officer hears the parties interested, decides the claims and declares the award. These are all time consuming stages. An amendment to the Act is suggested to speed up the acquisition process. It should not be necessary that the Land Acquisition Officer must hear the parties, process the case and declare the award for taking over possession of the lands under acquisition. When once the party's objections to acquisition are heard and Government decides to acquire the land and publishes a notification for the purpose under section 6 of the Act, what remains to be settled is only the quantum of compensation and its apportionment. This process is many times a time-consuming. I, therefore, suggest that a provision should be made in the Land Acquisition Act, 1894 to the effect that when once the notification under section 6 is issued by the Government, the Land Acquisition Officer can take possession of the lands in question any time thereafter by issuing a notice of 15 days in cases of acquisition of vacant land and 60 days in cases of acquisition of land with a building, and that on taking possession of lands in such manner they shall vest in Government free from encumbrances from that date. However, in order to ensure that the proceedings for determining the compensation do not drag on indefinitely to the detriment of the holders, there should be a provision that the Land Acquisition Officer should declare the award within six months from the date of the taking over of the possession of the lands under acquisition in the above manner, or else the price claimed by the holders shall be deemed to be the award. It should also be provided that from the date of taking over of possession in the above manner till the declaration of award and payment of compensation, interest at the rate of 10 per cent per annum on the compensation should also be paid. The chief merit of this suggestion is that the Government will be in a position to take

possession of lands in question immediately after the issue of notification under section 6 without having to take recource to the urgency clause. Taking recourse to the urgency clause provision of the Land Acquisition Act has usually been looked upon with disfavour by the courts, partly due to the fact that the land acquisition officers and acquiring bodies may have not shown sufficient urgency in dealing with such cases at all stages. In fact the application of urgency clause at the stage of Section 4 deprives a person of his right to represent against compulsory acquisition of his property. This should as far as possible be avoided. When once the opportunity to represent against acquisition has been given to the person concerned, the principles of natural justice are observed. When after considering all the relevant material including the representation of land owner it is decided that such acquisition is necessary, then there should not be any further delay in taking over possession of the land. The suggestion made above by me ensures this.

Very often, the civil courts tend to entertain cases against acquisition of lands by Government and give stay as a matter of course. Often because of this, land acquisition proceedings are held up for years. It is necessary to bar the jurisdiction of civil courts in respect of land acquisition proceedings, if it is legally feasible to do so. However, in the event of the jurisdiction of civil courts being taken away, it would be necessary to have some forum where persons aggrieved by the orders of the executive may go. The Land Acquisition Act, 1894 should be amended suitably provide for constitution of Tribunals. Questions relating to the existence of a public purpose, urgency of acquisition, quantum and apportionment, of compensation, etc., could be dealt with exclusively by these tribunals and all could be kept out of the picture completely. These tribunals would on the one hand act as a check on bureaucratic excesses and on the other hand ensure relief in genuine cases. The decisions of these Tribunals should be made final and binding on all concerned including Government.

The above amendments to the Land Acquisition Act, 1894 would greatly speedup the acquisition proceedings under that Act. But then how about speeding up proceedings under the other Acts? It may be difficult to amend all such Acts. Instead it would generally facilitate matters if a specific provision is

made in the Land Acquisition Act, 1894 that notwithstanding that there may be other laws providing for acquisition of lands for public purpose it would be open for State (that includes local authority) to take recourse to the procedure prescribed under the Land Acquisition Act, 1894. Such a provision is necessary because of certain rulings of the Supreme Court that where a specific law such as Bombay Town Planning Act, provides for acquisition of land by a local authority, acquisition should be made for the local authority, only under that specific law and that it is not open for the local authority to acquire lands under the Land Acquisition Act, 1894. This particular ruling of the Supreme Court in the case of *Shantilal Mangal Das Vs State of Gujarat* tends to close all the speedier avenues of acquisition to the local authorities. Since we propose to amend the Land Acquisition Act so as to provide for speedier acquisition, a specific provision could be made as suggested above in the Land Acquisition Act, 1894.

While the above steps would speed up the land acquisition proceedings, it is necessary to make suitable amendments in the Land Acquisition Act, 1894 in order to make the acquisition cheaper. Here we can take advantage of the 25th Amendment of the Constitution as is done in the Urban Land (Ceiling & Regulation) Act, 1976. However, it is suggested that we go a little carefully. In view particularly of the provisions of the second proviso to Article 31A(1) of the Constitution which provides *inter alia* that in respect of agricultural lands within ceiling limits personally cultivated by a person, acquisition by the State should be done only on payment of compensation not less than the market value. Since in many of the States, the land ceiling laws and other tenure laws have been passed and implemented, most of the agricultural lands including those in the urban areas will get the protection of Article 31A. Even the Urban Land (Ceiling & Regulation) Act, 1976 provides that where the Government wants to acquire land within the ceiling limits, it will have to pay the market value. Only in respect of lands beyond the ceiling limit Government has to pay an amount that is less than the market value. I, therefore, suggest a graduated scale of compensation so that at the higher levels of amount the payment could be below market value. I suggest that the amount (instead of compensation) payable shall be as

follows: Where the amount payable to a person as per the market value is up to Rs. 50,000 we may pay him the full market value as the amount. Where the amount payable to a person as per market value is above Rs. 50,000 and up to Rs. 1,00,000, the actual amount payable would be Rs. 50,000 plus 80 per cent of the remaining amount of market value in excess of Rs. 50,000. Where the amount payable to a person as per the market value, if the property is more than one lakh, but less than two lakhs, the amount payable may be Rs. 90,000 plus 60 per cent of the remaining amount of market value in excess of Rs. 1,00,000. Where the amount payable to a person as per the market value is more than Rs. 2,00,000, the amount actually payable may be Rs. 1.5 lakhs plus 50 per cent of the remaining amount of market value in excess of Rs. 2,00,000. The payment of the amount as above would reduce the burden to the exchequer in cases of lands of rich people and will not hit harshly the poor and middle class people. Since there is an element of compulsion in acquisition, I suggest that the solatium payable under the Act may be retained though reduced to 10 per cent of the amount payable.

The above reduced scale of payment of amount should be applicable only in respect of acquisitions for the Government, local authorities and non-commercial bodies of Government as may be specified from time to time by the Government. In respect of acquisition for companies, housing, cooperative societies, commercial corporations of the Government, etc., which may be partly financed by the Government, the full payment of compensation at the market rates under the Land Acquisition Act should continue though the benefit of the other procedures may be also made available to them.

The provisions of Gujarat Town Planning and Urban Development Act are more than adequate to enable the Government or the Urban Development Authorities to acquire property under the Town Planning Schemes, to develop various areas within their jurisdiction and to recover development charges from the land holders of the area. Therefore, it is not necessary to have a law for acquiring the right to develop land. It is also not necessary to have a system of Land Bank, for having land readily available for development purposes as it would be a waste

of precious Government resources.

Conclusion

To sum, it would say that, it is not necessary to make any new laws for acquisition of lands in urban areas. Suitable amendments to the existing Land Acquisition Act, 1894 would be adequate to obtain the desired results. It should be suitably amended to enable the Land Acquisition Officer to take possession of the land any time after the notification under Section 6 of the Act is published by the Government, after due notice to the party without waiting for determination and apportionment of the compensation. The jurisdiction of the civil courts should be barred completely if legally feasible. A Tribunal should be constituted under the Land Acquisition Act, 1894 for going into the questions relating to existence of public purpose, urgency of acquisition, quantum and apportionment of compensation, etc., arising out of the orders passed by the Government and Land Acquisition Officers under the Land Acquisition Act, 1894. A provision should also be made under the Act to enable the Government or local authority to take recourse to the speedier proceedings available under the Land Acquisition Act, 1894 even if acquisition is possible under a different Act. It is also desirable to amend the Land Acquisition Act, 1894, to change the word 'compensation' into 'amount' and to provide for a progressively reduced amount being paid instead of market value for lands and property acquired under the Act.

SOME THOUGHTS ON PLANNING AND DEVELOPMENT OF URBAN AREA

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Government in the past have generally taken a peripheral and negative stand with regard to the planning and development in urban areas. These areas have grown largely due to the pressures of growth of population, due to industrialization and migration of people from rural areas. While urban local bodies have been in existence for decades, these had neither the powers nor the resources to undertake planned development to meet the needs of growing population coming in these areas, nor these were considered the proper functions of the urban local bodies. The legal instruments and institutions available in the State of Maharashtra and how far these have been able to ensure planned development of urban areas and what should be the strategy for future, these are the problems on which certain suggestions have been given in the following paragraphs.

The Land Acquisition Act of 1894 is the oldest law available to the local bodies and the State Government for acquisition of land for any public purpose. The Act has been used in the past for acquisition of land as an instrument for meeting the requirement of urban land when the requirements of these were limited. With the growth of population and the consequent pressure for urban and urbanizable land during the last three decades, the procedure and the principles incorporated in this Act have become out of date. The procedure is such that by

and large it may take 5-6 years to be able to acquire land while the amount of compensation required to be paid would be the market value. It is unfortunate that the local authorities and Government are required to pay to the private holders of land compensation which is based upon criteria which take into account the increase in values of land by their own efforts. Considerable thinking has been made regarding the need for simplifying the procedure for acquisition of land and for delinking the amount to be paid for land acquisition from the market value but no worthwhile comprehensive legislation is still available to local authorities and Government for providing land in a simple manner at a nominal cost. However, certain specialized laws have been enacted for acquisition of land in slum areas and for acquisition of land under the Town Planning laws. While these to some extent have been able to bring down the time required for acquisition and the amount required to be paid, these are not adequate and enough tools and in most areas acquisition of land for provision of various amenities which is required to be made by the local body or Government is one of the most difficult tasks. While the Urban Land (Ceiling & Regulation) Act might help to make available to the State Governments certain lands in urban agglomeration enumerated in the said Act, it would not enable the local bodies to obtain land for parks, playgrounds, schools, roads and dispensaries for which they must take recourse to the normal laws of acquisition. It will be really anomalous that while Government would be able to get surplus land under the aforesaid Act at a nominal price, it will be required to pay market price under the Land Acquisition Act for payment of compensation towards land required for public amenities. Due to lack of adequate resources and simple procedure for acquisition of land, most of the Master Plans prepared in the past have remained on paper while the cost of acquisition of these lands would now be three-fold than what it was 5-6 years back and will continue to rise in future.

The Bombay Metropolitan Region Development Authority Act enacted by the State Legislature for planning and development of the Bombay Metropolitan Region now enables the

State Government to acquire land for any project of the Authority on payment of an amount which is hundred times the net monthly income derived from such land. This Act also provides for a simple and expeditious method of acquisition of land, whether vacant or built upon. While this Act enables the State Government to acquire land for the projects of the Authority, it does not enable the local bodies and the State Government to acquire land for provision of various amenities enumerated above. While reviewing the Development Plan of Bombay prepared by the Bombay Municipal Corporation 10 years back, it was found that hardly 3 to 5 per cent of land reserved for provision of amenities had been so far acquired in a period of 10 years and the cost of acquisition of such land by the State Government at this stage would make any scheme for provision of amenities prohibitive even from the point of view of cost of land. It is considered necessary that a similar simple and cheap method of acquisition of land for provision of amenities is made available to local bodies. The State Government is considering a proposal to amend the Maharashtra Regional and Town Planning Act on the above lines which will enable the local bodies, which are the Planning and Development Authorities in the State, to take up schemes for provision of these amenities expeditiously.

Coming to the institutions available for development in urban areas, it is seen that barring few metropolitan cities and other areas, where Development Authorities or Improvement Trusts are functioning for land development activities by and large, this activity has been left to the private sector. This has been the basic defect in the whole approach and strategy for urban development. While the local bodies are made responsible for provision of amenities to the ever-growing population with a limited tax resources available to them, it is the private speculators who have been able to get on with all the resources which land could have been provided for provision of these amenities and infrastructure, had the local bodies been empowered to take up schemes of land development on the lands of Improvement Trusts or have been empowered to levy development charges. The development charges which I am proposing

here is quite different from the concept of betterment levy which is levied only after certain improvements or amenities have been provided by a local body and become a matter of dispute. The development charges need not be linked directly with the level of amenities provided already but would have to be fixed with reference to cost so incurred per unit of land required to be incurred for provision of amenities like water supply, sewerage, roads, parks, playgrounds, schools and dispensaries and unless a private developer is required to pay for the cost of provision of infrastructure, the local bodies would never be able to keep pace with growing demand of fund for provision of these amenities. This fund should be earmarked by the local body only for the above purpose and kept in the Development Fund.

In addition to the above approach, it is considered necessary that local bodies should come in a bigger way in undertaking schemes of area development, whereby the needs of the land for the future growth of the towns is anticipated, such land is acquired in time and after providing the necessary fiscal and infrastructure the land is made available to the needy sections of the population including the weaker sections at reasonable cost. They should, however, include the cost of provision of infrastructure. In some of the Town Planning laws applicable to States like Maharashtra and Gujarat as well as in the Model Town and Country Planning Law, a system of preparation of town planning schemes has been envisaged. Under this scheme, instead of the local body or a Development Authority itself acquiring and developing and disposing of the land, the layout of the whole land is prepared. The lands required for various public facilities are then decided upon which are contributed by the original holders of land to the local body as their share of the cost of development along with the 50 per cent of the cost of development and after the area is provided with these facilities the reconstituted areas are made available back to the original owners of such land. In the States of Maharashtra and Gujarat, this method of development has helped in the past in opening up new areas. However, the method is very time-consuming and does not take into account the requirement of land for the weaker sections which constitute 70 per cent of population in any city and who cannot be provided land at cheaper

price as the allottee of the land under the above scheme of development is free to sell it for the section of the Society who can afford to give the maximum amount for such land. Such schemes being time-consuming, it takes nearly 10 to 15 years' time before a scheme is finalized and comes into effect and in the meantime haphazard and uncontrolled growth continues to take place. This has led to formation of large areas into slums and squattered settlements where, again, the local body and the State Government is required to spend from the meagre resources through either schemes for slum clearance or improvement. However, in view of the application of the Urban Land (Ceiling & Regulation) Act, the applicability of the above scheme would be reduced in these areas where the Urban Land (Ceiling & Regulation) Act has come into force as all other lands would now vest in the Government and would be available to Government for development and disposal for achieving the welfare of the common people. In view of this development also, it is necessary that the local bodies and development authorities are encouraged to take up schemes for area development and provide all the infrastructures which would be recovered from the beneficiaries, whether the land is disposed of or not. In this system of land development, it will be possible to subsidise the cost of land for weaker sections by adding the subsidy towards disposal price for upper income groups and for commercial land.

While it may be possible to set up separate development agencies for the metropolitan and other larger areas to take up the above task, it would obviously not be feasible to set up such bodies in other areas and it may be necessary, therefore, to entrust this work to local bodies. In this connection, it is necessary to examine whether the local bodies have got the necessary executing machinery for undertaking this work and how they can be assisted by the State Government in performing the task which is normally assigned to Development Authority. For this purpose, it will be useful to create planning and Development Committees within the local bodies consisting of a number of experts and representatives of Government and other agencies, so that they can be in charge of preparation of plans and execution of development schemes for area development with the help of Development Fund and initial seed

capital which can be made available to them. Only such approach towards development of land in the cities and towns would ensure planned growth.

A NOTE ON LAW AND URBAN LAND

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In the city of Hyderabad, traffic has increased enormously during the past decade. There is every need to widen the existing roads. This brings in the problems of land acquisition which procedure takes a long time. Hence, there is every need to adopt new courses:

(*i*) If the land itself cannot be acquired expeditiously by the public authority, could there be law for acquiring the right to develop land?

(*ii*) Should there be a system of land-bank for having land readily available for development purposes?

Urban land in the context of recent trends in planned development of the main cities especially capitals of the States of the Indian Republic, has its own unique importance. The general application of the procedure of the acquisition of land outlined in the legislation so far enacted, have outlived its utility. A dynamic approach, cutting short the cumbersome procedure, is the need of the hour thereby ensuring desirable, quick and calculated results in tune with the modern pace of giving a face-lift to the much retarded progress. Hence, it is expedient to enact a separate land acquisition legislation for urban lands only by excluding acquired lands notified so far, and there that will be notified for acquisition in future.

The Constitution of India has not given any privileged position to urban land. It will not be easy to define as to what exactly is meant by urban land for which its nature, scope and limitation are to be legally defined. Hence, the word urban need not be introduced in the Constitution to discriminate against non-urban land for the present.

Insofar as expeditious acquisition of land notwithstanding the detailed procedure laid down in the Land Acquisition

Act of 1894 is concerned, in view of the 25th Amendment to the Constitution of India (reproduced below) there is less to be thought of especially when the Central Urban Land Ceiling Act, 1976 is being implemented. But when acquisition becomes imperative for instant planned developments, it cannot be left to the vagaries and chances of the Urban Land Ceiling Act and a specific and exclusive legislation for the immediate taking possession and payment of a part of the *adhoc* determined compensation, on the spot or within a very short period, is necessary. The Amendment says:

> "No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law, and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash."

So far as acquisition of land at lesser cost is concerned, it will not be appropriate and just to deny due compensation as per the market value obtaining at the time of taking over possession. But for the property taken over in public interest, the part compensation not paid in cash can be settled for payment in either securities or other consideration for which the eligible owner applies and is agreed upon by the giver of the compensation.

As stated above, a legislation for compulsory acquisition on public interest, immediate taking possession of the property, payment of a part of compensation within a very short time, payment of the remainder compensation as settled with the owner or owners later, can be contemplated.

No specific provision can be made for the development of acquired property by acquiring the right to do so especially when multifarious ways are called for due to exigencies of varied nature of the activities to meet out public purposes.

The Urban Land which has its own advantages and drawbacks depending on its location and situation will not

serve the purpose if a reserve pool of assorted lands is created for any unanticipated use.

Lease Hold Rights as a Financial Resources

Under Section 148(1) of Hyderabad Municipal Corporation Act, 1955 an open land belonging to the Municipal Corporation of Hyderabad can be leased out for any term not exceeding twelve months. The present rates on which it is leased out is as under:

Up to 50 sq. yards	Rs. 2.00 per sq. yard
For every addl. sq. yard beyond 50 sq. yards	Rs. 1.00 per sq. yard.

The annual increase under this head is about Rs. 32,000.

Impact of Municipal Taxes on Land

Under Section 212(2) of Hyderabad Municipal Corporation Act, 1955 the rateable value of vacant lands not being an agricultural land and not appurtenant to building and the lands not built upon but capable of being used for building and the land on which the building is in the course of erection shall have to be fixed at the rate of 5 per cent of capital value of the land.

There is a difficulty in finding out the ownership of the parcels of open land. The open lands are invariably registered as agricultural lands in revenue records. Hence difficulties are experienced in assessing the open lands.

An Appraisal of Land Acquisition Act—Suggestions for its Improvement

Land is one of the basic requirements of life and society but unlike other requirements such as air and light it is capable of individual and exclusive occupation and its amount is constant and cannot for practical purposes, be increased. It is subject to diverse and conflicting demands and planning aims at the rational use of land. Basically, rational planning can be implemented if we have two powers, *viz*:

(*i*) Power to acquire land compulsorily and thus control its use by virtue of ownership, and

(*ii*) Power to control the use of land without ownership. These powers can only be had through legal channels, *i.e.*, laws which could be negative as well as positive.

Broadly speaking there are three different stages of planning procedure as for example:

(*a*) preparation,
(*b*) enforcement, and
(*c*) implementation of the plan.

Planning enforcement usually is done through negative aspects of law, aims at preventing development by private parties, public agencies and even Government Departments in a way other than what is envisaged in the plan. Planning implementation usually carries out schemes of improvement such as roads, laying of water, power and sewerage lines, public housing, schools, hospitals, community centres, parks and play-grounds, etc.

Every State has sovereign power to appropriate those lands which are under its limits of jurisdiction for purposes of public utility. This sovereign power is termed as 'eminent-domain' in the U.S.A. and 'law of compensation' in U.K. It is known as the 'law of acquisition' in this country.

The principle underlying an act of appropriation of private property by the State is that it must be done for 'Public purposes'. This principle rests upon the famous maxims:

(*i*) The welfare of the people is the paramount law, and
(*ii*) Public necessity is greater than private. But it may again be emphasized that this right is subject to the 'existence of public purposes' and the 'payment of compensation' which is guaranted under the Constitution of every country.

Every State is invested with police power, revenue power and the power of eminent domain. Police power is meant to impose regulation upon the use of land, revenue power is meant to impose taxation and the power of eminent domain is to acquire private property for a 'public purpose'. The police power with respect to ownership leaves the title to the property unchanged, but eminent domain does change it. Police power controls the use of property by the owner for the public good. Property is taken by eminent domain because of the usefulness in the

hands of the public and it is regulated by police power because of its harmfulness in the hands of the owner.

Modern concept of planning has radically changed and it is no more a regulatory or negative measure. To some, the main object of planning is in the national interest to locate the use of land between various competing or potentially competing claimants, to others it is the instrument for regulating the living and working environment, to some it is the means by which the haphazard machinery of commercial competition can be controlled in the interest of amenity, and to others again it is the mechanism of preservation.

However, in any event, the broad justification for planning control must rest on the fact that the need to control the use of land in public interest has become intense because of the continuously mounting pressure on land. Thus, effective implementation of schemes basically requires public ownership of land.

The Law of Acquisition serves as the basis of all legislative enactments all over India. However, this important piece of legislation, which is so vital for the implementation of the programmes of public welfare is outdated today as it was conceived in the period when India was a British colony and the relations between the Centre and the States were on a different footing. This Act was passed in a period when the forces at work in the society were less dynamic.

The procedure as a contained in this Act is more fureaucratic and time-consuming. There is an excessive time lag between preliminary notification and final taking over of possession. Further, it is repetitive and as a consequence of this excessive time is consumed in the initial stages with the result many schemes of public importance get frustrated in the initial stages itself.

Besides, this procedural aspect causing delays in the award making procedure which is a condition precedent for taking possession of land, does not commend itself to the present-day context. The frequent resort to writs and injunctions by the persons having an interest in the land, with an intention to get time, is another obstacle in the speedy acquisition of land for public purpose.

The emergency powers contained in Section 17 are there with

a very limited application to waste and arable lands while modern concept of planning is very comprehensive and covers almost all land uses. It is high time that the scope of this section is extended to cover normal cases involving other uses.

More important is the problem posed by the rate of compensation which is to be paid at the 'market value' of the land on the date of first notification under Section 4 of the Act. The market value conceals the 'unearned increments' which have accumulated over the past as well as the 'potential development value' which pertain to the future. These are socially generated surpluses in which the Society has also an equal share.

Besides this there is a problem of the payment of solatium which is to be paid in addition to these highly speculative values (market value).

The definition of 'public purpose' also needs to be supplemented with an inclusive definition to cover such of the cases where reselling of land is intended by the Government.

The Act is a disjointed piece of legislation as it does not have any correlation with the land policy of any State which results in chaos and confusion, when one goes for concrete planning.

Another situation is that because of various modifications adopted by the States in the matters of procedure and compensation, a discriminating situation has arisen, which is repugnant to Article 14 of the Constitution. We find as a result of this multiple application of laws, a land gets different rates of compensation under different Acts in the same State.

Recommendation for the Improvement of the Land Acquisition Act

The greatest impediment, generally complained of, is the excessive compensation, specially in an urban situation, which gets determined as payable in the form of compensation. The increase in value is mainly due to the increase in demand which is brought about by the prospects of its development. In such cases, it is the demand that increases its value and here alone the simple rule of economics works.

(*i*) Market value to be determined not only with respect to

the present use of the land but also its potential use in terms of the future requirements.

(*ii*) The principle of ante-dating the values of determining the compensation with reference to the present use of the property excluding the future potentialities is against the principle of fair and just equivalent of the property acquired.

(*iii*) The principle of determining the compensation by the formula of capitalization of the annual net income of property disregarding other considerations, having no proximate relationship with the fair value of the property acquired is legally untenable.

(*iv*) There should be a uniform law of acquisition which will be opposed to such enactments which contain different procedures and principles of compensation.

It is an established fact that the payment of compensation at the market value is detrimental to the society as it contains in addition to its real worth, the earned increments and the speculative value depending upon the future course of developments. These elements are socially generated and the society has got every right to share these surpluses.

Thus, the real problem is to mop these unearned increments and control the speculative trend in the market value. This calls for various administrative measures for which purpose an organization may be set up to entirely deal with matters connected with the development and disposal of land by acquiring in bulk to pool the amount into a Revolving Fund.

(*v*) To freeze large areas by way of notifications.

(*vi*) To levy conversion tax.

(*vii*) To collect betterment levy and evolve other measures.

Administrative Procedure to be Simplified Under the Act

To dispense with the issue of preliminary Notification.

To dispense with the condition of payment of compensation of taking over the possession of land.

Constitution of Special Tribunal as final Appellate Authority.

Constitution of a Land Development Board and a Land Bank.

Introduction of a Revolving Fund.

To have one uniform law of acquisition for the entire country.

To centralize all acquisitions under one umbrella.

SOME REFLECTIONS ON URBAN LAW AND URBAN DEVELOPMENT*

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The subject matter of this seminar lends itself to different approaches. As has been made out in the subsequent paragraphs, a particular approach has been adopted in this paper. This approach consists in pleading for a new system of legislation for the urban areas in relation to the urban planning and development. The starting point of this approach is the belief that there is no identifiable legislative framework in this field in the country yet, although various sectors like slums, housing, water supply and sewerage, environment have their own quota of legislation mainly to achieve ostensibly restricted objectives which are parts of a larger objective of improvement of social environment. The creation of Urban Development Authorities as something of a super imposition on these functional statutory bodies has tended to complicate the situation further.

This paper has not dealt with what are conveniently termed as Planning Laws by which are meant the Urban and Regional Planning Acts, the Improvement Trusts or even the Municipal Acts. In fact the basic purpose of this paper has been to question the adequacy of these legislations in the context of revised views on Planning and Development which have been indicated in the paper.

The subjectmatter could also have been tackled in terms of the Constitutional Laws, Zoning and Sub-division Laws, or even Rent Control Laws, since all these have their own effects on urban land, and are even enacted in view of certain issues arising out of urban land. But these have not been dealt with

*The views expressed in this paper are personal views of the author and not that of the Government.

in this paper.

Finally, it is relevant to point out that this paper contains some statements and issues which have been posed to facilitate further discussion in the seminar. The arguments have therefore not been developed in a continuous manner, nor has it been the intention to come to any conclusions on the points raised. Nor are the statements and the issues exhaustive. It is hoped that the deliberations in the seminar, to the extent these will be centered round the issues raised in the paper, will be able to throw more light on the subject so that at least on some points contain policy directives could be brought out.

In this paper, it will be assumed that, urban land is primarily required for urban development. It will be further assumed that the particular legal framework which is sought to be achieved will necessarily have as its primary objective to secure the goals and objectives as set out in any given urban plan.

The style of urban planning which is recommended in this paper does not conceive of planning as restricted to physical or spatial planning, but as a total process involving other aspects of urban management. Planning in this view is concerned with relationship between goals, objectives and targets on the one hand, and public policy instruments on the other. This style of planning also accepts a systems approach. This is valid for two reasons: firstly, because the 'systems' concept emphasizes notions of interdependence between sub-systems; secondly there is a certain advantage in systems analysis which involves bringing all relevant knowledge to bear on the systems of interest, and hence provides a first-principle basis for our study, rather than a disciplinary basis.

The urban area has been increasingly identified as a complex system which has many obvious sub-systems: economic, political, land use, housing, recreational, health, family, educational, cultural, legal, etc. The legal system is certainly an important sub-system of the city.

There is a feeling that the present treatment of law in planning education does not sufficiently enable the planner to comprehend the components and the limits of the legal system and its position as one of the inter-twined sub-systems that

make up the city. The present approach does not alert the planner to the many positive and negative pressures which the law can and does exert upon the quality of the urban environment.

The concept of urban law, as seen in this paper, would have as its focal point the city dweller and the impact of the legal system on the resident and the environment in which he lives. In contrast to the traditional approach, this view of the urban law would not represent exclusively the view points of the Governmental authority. The subject of urban law would be organized around urban problems rather than legal doctrine. It would also deal with the law as a process rather than a static set of rules. Seen in this light, urban law is both a possible cause and possible solution to urban problems wherein the social forces at work are considered more important. The question of what the law can and cannot do is thereby repeatedly raised.

It is also the stand in this paper that the entire concept of urban legislation is to be conceived of and enacted both to institutionalise the planning effort outlined above and to facilitate its evolution and implementation subsequently.

While law deals with the context of man as a moral being, planning takes society as the ultimate frame of reference for human context. In reality, however, both the planning and law are concerned with man and the society, only the stress is put at different levels along the time of relation existing between the two.

Of the three dimensional role of law, namely, as the instrument of power, as the regulator of reciprocal interest and as the coordinator of common efforts, the planning law partakes mostly of the last two. Yet, the most popular image of law projected upon the mind of the common man, not excluding the planner and the legislator, is that of the power-instrument. It is true that these interpretations may arise due to the fact that governmental planning entails authoritative decision making. However, it is equally true that all authoritative decisions are not the results of planning. Planning decisions are meant for maximum social benefit and they involve conscious and deliberate choice of priorities from amongst competing demands for resources which are both limited and susceptible of

alternative uses.

The need to choose introduces into the planning exercise the element of law; because authoritative choosing would be a juristic act affecting the rights of others. If the choice is not going to be an *ad hoc* decision, it should be exercised with due consideration and classification of available resources in terms of their availability as well as of potential alternative uses. It is, therefore, felt that the time has come when we ought to put stress on the more constructive aspects of the functions of law. These are, as we have mentioned, regulation of reciprocal interest and coordination of common efforts.

Generally speaking, there are good and ample reasons for public intervention into the urban land market. Indeed, one could even say that the success of urban planning depends on to what extent land supply and land demand can be brought into balance. The major problem here would be the provision of sufficient land at the appropriate time and location, in order to meet the needs of the population. Thus, planning by designating land in advance of development, and then acquiring it either through land acquisition or employing the powers of eminent domain, does have a significant role in implementing the social use of land.

A major issue in the urban land market has been who should receive increases in land value that accrue from changes independent of the decisions and actions taken by the land owners. Normally, it is the anticipation of such land value increases that promote speculation in land. The expectation of unearned increases in land values has produced a number of serious consequences for the urban development process. For instance, it tends to withhold land from the market by creating land shortage, prices are driven up and this in turn makes it difficult for new residents to achieve even minimum housing accommodation. This situation forces the new immigrants to break all sorts of regulations as they make provisional and transitional housing lacking vital services on expensive land near the city. Further, the expectation of future windfall profits precipitates the development of some lands, specially on the urban fringe, while forcing overuse of others. This situation also creates difficulties in terms of land acquisition as enough

funds may not be available with the Government for the acquisition/purchase of the property on payment of compensation thereby severely restricting the progress in urban development.

It is this context that the Urban Land (Ceiling & Regulation) Act, 1976 has to be seen. As the preamble to the Act mentions, this Act has been enacted "with a view to preventing the concentration of urban lands in the hands of a few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good". The implications of the Act in relation to urban development can be identified as follows:

(*i*) It should make available to the State certain amount of vacant urban land within the urbanizable limit of an existing urban area.

(*ii*) This availability of land should be possible at a lesser cost than otherwise have been possible under the Land Acquisition Act of 1894.

(*iii*) Since however not all this vacant land will be available in large chunks or over contiguous areas, extensive town planning schemes by "re-plotting and re-allocating methods" will have to be resorted to.

(*iv*) A wider range of choices for public policy to reuse such land for various social and economic purposes will now be available for which policy directions will have to be carefully determined and implemented.

(*v*) The consequential change (over a period of time) in the urban land ownership structure will come about.

(*vi*) Urban land taxation measure will also have to be co-related suitably to augment financial resources of the local bodies specially.

(*vii*) Density distribution over the urbanized area will tend to approximate to a more even pattern than it has been hitherto. Speculation, profiteering and irregular transfers of holdings may generally get lessened over the years and finally.

(*viii*) The Society's outlook on land, whether developed or undeveloped, in the urban agglomerations might undergo a change when land will be considered both as a commodity and as a resource.

It is, however, not to say that the Urban Land (Ceiling & Regulation) Act will answer all the problems of urban land acquisition but it is a significant step forward, and its success will depend on a proper appreciation and implementation. In fact there would be many instances where the imperatives of urban development would still require recourse to large scale land acquisition not feasible under the Urban Land (Ceiling and Regulation) Act, 1976. Additionally, therefore, we would still have to contend with some structural changes in the Land Acquisition Act of 1894 as a basic approach to this problem.

THE IMPACT AND EFFECTIVENESS OF ZONING REGULATIONS, ETC. ON URBAN LAND DEVELOPMENT WITH SPECIAL REFERENCE TO DELHI MASTER PLAN*

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Zoning in some developed countries was applied in the early stages to regulate isolated features of land development in few important cities and towns. But it soon became evident that courts were reluctant to uphold such zoning provisions wherever a city had enacted them without specific state authorization. Also the need for comprehensive zoning as against restrictive and arbitrary zoning was felt. Comprehensive zoning means regulations which cover in more or less detail the manner in which all land within a city may be developed with relation to kind of use, height of buildings and extent of land coverage including density of population.

There are some fundamental principles of zoning law which are universally accepted such as:

(*a*) it must serve a public purpose related to health, safety, convenience or general welfare.

(*b*) it must be comprehensive and reasonable rather than arbitrary; and

(*c*) it must be flexible to meet the new and changing conditions of society at any given time, to meet the increasing complexity of urban life otherwise it would become a block to progress.

Zoning is essentially a legal tool and an administrative

*Extracts from "Zoning and Civic Development," Chamber of Commerce, United States.

method of putting into effect certain features of comprehensive plan. The comprehensive or the Master Plan is a guide which suggests the various existing and proposed land uses and features related to each other in a brodest sense.

Zoning should accentuate the positive. Too often there has been a tendency to have zoning regulations in terms of what may not be done rather than what is permitted. It should be considered primarily as a device for the conservation and protection of urban land for its most appropriate use in the interest of preserving the economic worth and stability and its physical usefulness and productivity and therefore all types of land uses should be allocated in the area most appropriate for their needs and it should be protected from the adverse effects of the others. These sense of mutual compatibility and incompatibility of land uses must prevail without recourse to spot zoning which is an illegal exercise of zoning power.

Zoning ordinances must be custom-made for the community involved. It underlines the difficulties involved in adopting any so called 'Model Ordinances' and the hazards of the expedient, particularly prevalent in smaller cities and towns, of assembling a zoning ordinance by copying provisions from the ordinances of other communities.

Experience has demonstrated that even the best zoning ordinances do become out of date. Periodic revision is essential if the ordinance is to establish and maintain a rational land use pattern. But most amendments are not comprehensive ordinance revisions proposed by planning agencies after reconsideration of the city's plan. The typical amendment is initiated by a property owner who would like to use his land in a way not permitted by the regulations. Officials in a number of cities have expressed dissatisfaction with present methods of processing this type of amendment.

"It is obvious that provision must be made for changing the regulations as conditions change or new conditions arise. Otherwise zoning would be a 'Strait-Jacket' and a detriment to a community instead of an asset."

Zoning Regulations —Application for the Master Plan for Delhi

The zoning regulations, including the provisions regarding uses, requirements in use zones and sub-division regulations

with their administration applicable in connection with the implementation of Delhi Master Plan land uses are derived from the above mentioned ideal conditions. These are definitely comprehensive in nature as they are applicable to various land uses/use zones such as residential (for various densities); agricultural green belt; rural; commerce (retail shopping, general business and commerce, whole-sale); industrial (extensive manufacturing, light and service industry, flatted factory work-cum-industrial centre, special industry, extractive industry, mining, brick kilns and stone quarrying etc.); warehousing, storage and depots; Government Offices; recreational; public and semi-public facilities.

Each zone has its special regulations because a single set of regulations cannot be applied to the entire city, as different use zones vary in their character and function. In this respect, zoning regulations differ from Building codes or Sanitary codes which in general apply uniformly to all lands and buildings of like use and character, wherever they may be located in the community. Also, zoning regulations are not to be used as nuisance control nor can they be used to accomplish any kind of human segregation like excluding certain communities or income groups from certain areas.

Zoning does not prohibit uses of lands and buildings that were lawfully established prior to the coming into effect of zoning regulations. If these uses are contrary to the regulations in a particular uses zone and would not be allowed as new uses; they are designated as 'non-conforming uses'. The provisions made in the regulations are such that it will gradually eliminate non-conforming uses without inflicting unreasonable hardships upon the property owners.

As regards non-conforming uses it is stated that mainly the provisions regarding the industrial non-conforming will come into effect while in the case of the rest of non-conforming uses such as residential non-conforming and commercial non-conforming uses, the provisions will come into effect only after the preparation of zonal development plans, since only these will determine the correct sitting.

As regards built-up area it is stated that since the land use plan does not show local shopping, local parks, schools, etc., the local municipal authority may allow such uses, based on

quick surveys and on *adhoc* basis until the zonal development plans are prepared and when prepared will incorporate these decisions.

As regards the new areas, development shall take place only on the basis of zonal development plans.

*Impact and Effectiveness of Zoning Regulations of Master Plan for Delhi.**

The objectives of Delhi Master Plan which came into effective force in September, 1962 with the statutory approval had to be achieved in a major way within the next 20 years, *i.e.*, by 1981. By now, more than 14 years are over, but a substantial part of the programme of this comprehensive plan has still remained to be achieved although the zoning regulations which are a legal tool and an administrative method of putting into effect this comprehensive plan have already been in force from the very date. The reasons perhaps being that the provisions regarding uses and requirements in various use zones under the zoning and sub-division regulations are only ideal for the developed countries and not for developing countries like India, where it has yet to overcome the economic disparities to reach a reasonable standard of living.

Let us take for example—

The minimum size of residential plot as per Zoning Regulations has to be 125 sq. yds. which provides for 1350 sq. ft. of built-up space for two families divided on two floors. On the other hand, about 45 per cent of the population has a monthly income below Rs. 200. About 42 per cent has a monthly income between Rs. 200 to 500 while only about 14 per cent population has a monthly income of Rs. 500 and above. Therefore only the population falling in the category of 14 per cent is expected to make use of such developed plots, while the remaining 86 per cent of population has practically no chance of being benefited by such provisions, as it can hardly afford to buy such expensive plots (although minimum in size) and build a house.

The Central Government had always preferred to develop the acquired land only in the form of plots and not to go in

* Extracts from Delhi Master Plan.

for construction in the form of group housing.

From our experience, it is observed that only about 35-50 per cent of the gross land is available in net residential plots, excluding the land required under various community facilities when the gross residential density is between 100-150 persons per acre, when the entire development is of plotted type, catering for various size of plots of 125 sq. yds. and above. This clearly shows that this needs re-thinking as it is often felt that the standard of facilities as well as the minimum size of plot are rather on higher side and beyond the income capacities of common man who belongs to the income category of 86 per cent, *i.e*, having an income of up to Rs. 500 only per month.

As against the development of land of residential use zone, achieved during the last 14 years on the norms of the Zoning Regulations, achievements of D.D.A. in the past 1½ years alone by providing only a reasonable minimum size of plot of 30 to 40 sq. yds. in its re-settlement colonies by providing the bare minimum infrastructure are fantastic and staggering, as it provides for living space to nearly 5-7 lakhs of population, who were occupying valuable government land unlawfully and who had no forseeable future in the assimilation of urban population and contribute to city's future wealth, by becoming a major part of the manufacturing force.

This clearly indicates that the Zoning Regulations must be flexible to meet the new and changing conditions of the society in a given time to meet the increasing complexities of urban life, otherwise these would become a block to the progress.

Another interesting example to quote is that of provisions regarding the discontinuance of industrial non-conforming uses. As per the Zoning Regulations, too much protection by way of inducements have been stipulated in the form of providing extra developed land needed for their expansion at the new site. Provision of loan, etc., and at the same time giving additional time (moratorium period) for shifting to the maximum of 10 years and only that with a provision of non-conforming tax, to be charged in case the industry continues to stay after the moratorium period has lapsed and it is considered by the competent authority (although the competent authority is yet to be defined). In the case of non-nuisance industries, the moratorium period is extended up to 20 years.

From our experience, it is observed that such inducements have proved to be expensive for the D.D.A. on the one hand while on the other hand, the allottees of industrial land have completely misused such inducements for their personal benefits at the cost of public exchequer. No appreciable effect on the improvement of urban environment can be measured by their shifting because a majority of them were of non-nuisance type who were established and permitted to continue under the provisions of law for another 20 years. The inducements have given them almost a free ticket and simultaneously created an unhealthy competition for declaring themselves as non-conforming for their personal benefits.

By this process a substantial industrial land has not been effectively used when there was no priority for the shifting due to not having a clear in the Zoning Regulations. No proper survey or study was carried out by the Government agencies responsible for the proper growth of industries by way of fixing and working out priorities before recommending their shifting and recommending allotments. The recent action taken by the D.D.A. in a realistic manner by ignoring the lavish inducements of the zoning provisions in the shifting of Iron and Steel Merchants and junk dealers, occupying D.D.A.'s land for a number of year vitiating the environment is an eye-opener. The objectives of Master Plan have been achieved within a period of few months without any loss to the allottees as well as to the public exchequer by accommodating every individual in a reasonable amount of additional developed land and by issuing standard designs to overcome the lengthy process of building regulation, which otherwise had remained unresolved for a number of years due to the selfishness of the merchants, who had throughout objected to such shifting and always wanted alternative land as per the standards and inducements given in the zoning regulations to the tune of nearly 5 to 6 times more than that has been allotted by the D.D.A.

Perhaps with the complete success of the above objectives of Delhi Master Plan, the D.D.A. has launched another important programme of construction of industrial sheds which are to be offered to individual industries with the necessary infrastructure instead of making plotted development. It is also going to take up the construction of industrial work-cum-centres another

important element of Master Plan so far not fulfilled. This will accommodate the long standing need of small non-nuisance industries which has not been fulfilled by the concerned government agencies, responsible for the proper growth of industries. The purpose behind undertaking such work by D.D.A. is to curb the tendencies of industrialists to obtain cheap developed land from D.D.A. on the basis of zoning regulations, which provide for a minimum size of 400 sq. yds. of plot in light manufacturing and 1200 sq. yds. of plot in extensive manufacturing, keeping it idle for a number of years and when built to come forward to seek permission for renting out part of the built up space as the type of industrial activity the allottee was carrying in the original location was of such type, which hardly needed any additional space of expansion and, therefore, the additional space available in the allotted plot was not really needed by the allottee and hence the request for renting out. All this has not proved well in the interest of the community. D.D.A. has thus been in a position to save developed industrial land and utilise it for a gainful purpose by allotting such industrial sheds and built-up industrial space in the industrial-cum-working centres only to those selected industrialists which D.D.A. feels must be shifted on account of being nuisance to the adjoining residential localities.

Another ineffectiveness in the Zoning Regulations has been the discontinuance of commercial non-conforming uses which are to come into effect only after the preparation of zonal development plans. Since the pace of preparation of zonal development plans and their approval has been extremely slow on account of being a long drawn complex process, the residential areas had suffered seriously from the harmful invasion of commercial and industrial uses, although sufficient commercial space was made available by D.D.A. Therefore, in order to get over the ineffective provisions of zoning regulations, show-cause notices were served for the stoppage of such misuses with the punitive action of severing the electricity and water connections to the premises. This has created the desired effect and has been successful to a great extent in stopping the misuse of the residential premises for commercial purposes.

The examples quoted above are only to explain the short-

falls in the Zoning Regulations and their ineffectiveness under some circumstances. The Delhi Master Plan has made a provision of review after every 5 years, but no efforts have been made for changing the regulations as conditions have changed and new conditions have arisen and thus the regulations have remained 'Strait-Jacket' and did not became an asset to the community in the recent economic programme initiated by the Government.

In the provisions regarding the uses in the 'Use Zones' for each use zone, we have three provisions, *i.e.*, (*i*) uses permitted, (*ii*) uses permissible if allowed by competent authority after special appeal, (*iii*) uses prohibited.

The 'uses permitted' sometimes do not suit the community's interests in the changing times; "uses permitted under special appeal" initiated by a property owner who would like to use his land in a way not permitted by the regulations but in his favour dominated by politics and personalities also do not suit the community's interests and time consuming which many a time is out of proportion to the importance of the request and still remaining uncertain in the absence of correct interpretation and clear-cut rules and regulations. In the case of "uses prohibited" the individuals do not feel any responsibility which is detected only after receiving complaints and with the lengthy process involved in the discontinuance or stoppage always proves beneficial in the individuals favour.

Therefore, for making the zoning regulations more effective, the provisions in all the above mentioned three categories must be clear out which do not involve any further interpretations.

The programming of city development is directly related with the zoning regulations which in turn must be oriented to city's economic growth. 'Model' regulations would serve no purpose, but these should be reasonable and flexible enough to meet the new and changing conditions of the society at any given time.

UNIFICATION OF BUILDING CODES FOR REGULATED URBAN LAND USE ECONOMY AND LOW-COST HOUSING—A CONSPECTUS

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It is well known that cities and towns in India have grown during the century in an unplanned manner resulting in a very high residential density of different categories of people taking advantage of the lack of effective legal controls over the use of urban land and also lack of conformity to the standards of planned use of scarce urban land. By and large this has been a human problem particularly for the poorest sections seeking work and earning a livelihood. Similarly, the unplanned location of industries within the city limit as well as its peripheries have turned them into centres of attraction for migration from the surrounding villages as industrial workers, domestic servants and all types of activities catering to city life. In this process man-land ratio within the city limits has been rendered adverse to an extent as to perpetuate overcrowding in the form of slums and also giving rise to other unhealthy developments. Notwithstanding the prevalence of town planning legislations and also in recent year of Master Plans for development of cities, there has been no easing of population densities and concomitant problems through an anti-clock wise movement deliberately initiated and implemented by the Government and municipal authorities.

Land Use Economy

Several large tracts of urban land have been un-economically used for locating institutions with large compounds for erecting governmental and private buildings, with spacious courtyards and backyards in such a fashion to encroach upon the availability of the use of scarce land for public purposes. In addition,

large tracts of urban land are owned by private individuals who have no commitment for its development with infrastructural facilities. Many of these pieces of land are occupied by slum dwellers and squatters who fiercely resist their vacation and re-settlement except on use of administrative powers. This situation has arisen out of the fact that in many urban areas proper town planning legislation does not exist and or has only been recently enacted. Also there are in vogue outmoded building bye-laws which do not cater to the modern physical requirement of dwellings, open spaces and infrastructure facilities.

The rational use of scarce land is fundamental to the social, economic and cultural development of the people in the city. Political behaviourism, susceptibility of people in cities to political programmes and movements, etc., are evidently conditioned by their living conditions within the city. These have also been borne out by research studies. The problem of reconciling the vagaries of voluntary house building by the upper classes commanding wealth and influence within the city have evidently squeezed out the economically weaker sections of the community and made them dependent upon unsatisfactory housing conditions. Primarily, this type of phenomena such as we face today have their parallels in all countries of the developing world also. The necessity for bringing about order and delimitation of ownership on land in keeping with the needs to construct buildings and houses to meet the essential needs of human habitation, institutional purposes, etc., has been fully recognized by all countries in the world through the enactment of their National Building Codes. A Building Code is in principle, the crystallisation of ideas that reconcile the supply of resources with demand both of land as well as the use of minimum essential physical space for construction purposes. They are thus instruments for evening out the differential standards of living within any city and constitute an essential step to safeguard the interests of the economically weaker sections.

The Rural Urban Continuum

There is yet another important dimension to our predicament in land use economy. The unwieldy expansion of urban

centres in the wake of population explosion has necessitated the extension of urban boundaries and gradually covering the peripherial rural areas around metropolitan cities as well. One particular point for consideration here is that for vast peripherial rural areas around metropolitan cities and large towns, there has been in most cases no proper town planning legislation or bbilding bye-laws to govern construction activities. As a result, alongwith regulated construction activity in the urban centres there has been simultaneous haphazard development in the areas surrounding metropolitan cities and urban agglomerations. Gradually as these rural and peripherial areas are accommodated into the urban centres, they have been posing serious problems as regards proper regulated urban development and maintenance of adequate physical environmental conditions. It is, therefore, of great importance that not only we give attention to regulated urban development and unification of building bye-laws therein but simultaneously it is high time this continuum is considered. Hence we should also take necessary steps for broad-basing regulated development not only in the periphery of the urban agglomeration but also the rural areas that are normally drawn into the vortex of urban spread and sprawl. With these steps, we may expect that in times to come the expansion of urban centres do not pose intractable problems and urban development as a whole could be properly tackled.

We may recall that essentially municipal bye-laws and Town Planning legislations are complementary and set the patterns of civic life within their jurisdiction. However, since many of the municipal bye-laws have become outdated and are not in keeping with the requirements of the expansion of towns, legitimate construction activity has been hampered. The Master Plans of the cities and towns have received a good deal of attention in various forums. The financial resources being limited, both cities and towns in the country have had to be continuously dependent on octroi and other types of indirect taxation for city development purposes and meeting administrative expenditure thereon. It is not unlikely that this situation has contributed to the delay in the implementation of National Building Code based principally on the fear of its changing the existing patterns and distributing the patterns of house building that

might result in revenue loss and pose problems for improving and strengthening the infrastructural facilities. It is obvious that there is a sort of vicious circle implicit here contributing to the stagnation of life and activity.

The development or improvement of the urban habitat cannot apparently be conceived except in terms of a comprehensive legal framework laying down the dimension for the use of physical space for construction purposes. Although our NBC. was brought out in 1970 there has been inevitably resistence on the part of the states to implement the same. Restructuring the settled patterns normally produce doubts and hesitations and these were expected. There has also been considerable delay in revising the Building Codes of various municipalities although in this respect some states have initiated some action. With the passing of the Urban Land (Ceiling & Regulation) Act 1976, there has been a focus supplied all over the country in linking the issues of availability of land within the city limits to cater to the needs of economically weaker sections. The subject has been widely discussed in terms of its consequences as well the ultimate uses to which the surplus urban land would be put for improving the house construction activity for EWS Primarily the situation is one of the improvements, enforcing the norms in building construction, land use matching the infrastructural facilities within the city and making them conform to broad ideals of healthy and safe urban living, free from congestion. In this respect a reconsideration of the rationale for uniform Building Codes in the country would be pertinent.

The Rationale for the Unification of Building Codes Restated

As stated already, the urban crisis has assumed great dimensions and acuteness and consequently land prices have rocketed high. Some radical measures to control land use have thus become inevitable. This is particularly necessary with a view to eradicating the problem of slums and squatter settlements which pock mark the urban areas. The problem is basically to make land available at reasonable cost to the people in the low income groups as well to people belonging to the economically weaker sections of the society. Apart from the considerations of the economics of land use which is governed by the existence of

rational town planning legislations as well as building bye-laws, the speculation in urban land values has to be prevented. Considering the high rate of urbanization in India and the problems of urban development in metropolitan centres like Bombay, Calcutta, Delhi that are fast getting out of control and also in view of the urgent need to provide housing at very low cost for the vast majority of urban populace, it had become necessary to take measures for socialization of urban land. The Urban Land (Ceiling & Regulations) Act 1976 enacted by the Government of India and which has been endorsed by almost all the State Governments, is intended to achieve this objective.

Such radical measures for socialisation of land have to be duly supported by complementary town plannig legislation and building bye-laws. As regards town planning legislations almost all the State Governments have suitable machinery and they are expected to evolve measures to give effect to their implementation which in due course would account for changing the social situation as regards urban land use.

With regard to building bye-laws the situation is far from satisfactory. Every local authority has a set of its own building bye-laws which were evolved over a century ago. These are not in tune with the present day urban land use and in terms of undertaking physical activity for construction of dwellings and other types of buildings. These are in many respects wasteful. Realising the pivotal role which building bye-laws play in ensuring proper utilization of land and for creating safe and healthy environment, attempts had been made to unify building codes in the country. It was as a result of this effort that a National Building Code of India was brought out as far back as 1970.

One of the main features of the National Building Code of India is that it attempts to bring in line the performance concept in the building industry which is essential in order to permit innovations in planning, designing and construction of buildings for maintaining proper quality of environment and achievements of this at the minimum possible cost. The Code for the first time covers the spaces of construction regulations, bye-laws for open spaces and fire safety. There is also provision to ensure safety of workers during the construction. One

of the novel features that has been suggested in the National Building Code is to have a machinery to control urban development with pointed attention to aesthetics in planning, designing and construction. To cater to these the National Building Code has recommended the constitution of an Urban Art Commission. The NBC is in essence a welfare oriented set of rules and regulations wherein the well-being of the citizens in their residential life and work outdoors is amply safeguarded.

The N.B.C. and Socialization of Urban Land

The National Building Code as we have explained already, caters to urban construction of all types except for the housing for the economically weaker sections of the society, which are to be built to cater to the standards and regulations both in the matter of physical structures and infrastructure facilities and layout controlling the environmental conditions. The NBC is primarily intended for permanent type of dwellings and other types of institutional structures providing public utility services. It is based on latest advances in the field of building science and technology. However, it does not account for the dictates of practical situations that exist in our country. For instance, 1/4th to 1/3rd of India's urban population has been forced to live in slums and squatter settlements where their housing consists of dilapidated and improvised shelters with inadequate services or absence of these. The settlements are unplanned and haphazard and the environmental quality is poor.

In an attempt to socialise urban land and to make it available for the economically weaker sections of the society, a large scale programme in recent years of sites and services has been taken up in some metropolitan cities. On these small size plots varying from 25 to 30 sq. m. the small families are expected to construct their own low cost structures through self help. To ensure proper quality of environment, further amenities are provided by the local authorities through suitable open spaces, community facilities, layout of housing colonies, provision of social services and even work centres and transport facilities, etc. The existing provision of National Building Code precluded these types of settlements. In order to remove this deficiency, the State Ministers of Housing in their conference in Bhopal in 1975 had suggested that a supplementary section

in the National Building Code may be incorporated to cater to the housing requirements of the people of the low income groups and the EWS. Accordingly, the work in this direction was initiated by the NBO in consultation with Housing and Urban Development Corporation, Town and Country Planning Organisation and the Indian Standards Institution and others. Subsequently, certain directions have been provided to the Indian Standards Institution to frame a suitable supplementary section to cater to housing requirement of the people in the EWS category. The ISI has since brought out a draft supplementary section which has been circulated widely for eliciting comments. This section is expected to be finalised early this year.

The National Building Organisation has been the pioneer national institution to focus attention on the problems stated above. It is fully seized of the various provisions of NBC that are at present not in some respects in keeping with policies of assistance to the EWS based on income criteria. There is no doubt that construction of low cost houses within the city limits would call for the examination of connected issues. The low cost construction that has been envisaged to meet the requirement of the EWS cannot be undertaken with low cost material. The relative advantages of balancing the specification for low cost construction with retaining the quality of the houses present obvious difficulty to the design engineer very much in the same manner as it is difficult to define low cost houses in terms of overall expenditure that will be incurred for the construction, leave alone meeting the cost of land. Considerations on the above lines have also weighed with the ISI to develop a supplementary code as stated above for low cost housing in partial relaxation of the provision of the N B.C. While this supplementary code might retain the safety measures such as structural safety and fire safety intact, the ISI has also envisaged the relaxation in planning of the housing colonies in terms of its density, size of the plot, plinth area, minimum frontage, community open spaces as well as relaxation in general building requirements such as sizes of the rooms, W.C. and bath and kitchen, minimum heights, etc. This supplementary code would be applicable to low cost housing meant for the economically weaker sections of the society.

Notwithstanding what was stated about the circumstances leading to the modifications of NBC particularly the original conceptions embodied in its provision for urban construction, it may be recalled that India has no National Housing Act like some of the advanced countries of the West. Hence in several parts of India, its impact cannot be stated to be universal in the sense of promoting a consciousness towards durable constructions, irrespective of income categories. Hence, there is reason to feel that unless the NBC principles are kept in the forefront the present trends of urban development are likely to render the economic use of land for viable and durable constructions thereon impossible in the near future. Whereas city plans and town legislations have bestowed a great deal of attention to infrastructural facilities for the public in terms of transport network, water, sewerage and drainage, open spaces etc., there has been no corresponding emphasis on the need to follow the NBC principles by all concerned. Consequently there is reason to feel that unless the surplus land is made available by the strict implementation of the Urban Land (Ceiling & Regulation) Act with corresponding emphasis on implementing the NBC principles, the respective objectives of construction of buildings and fostering city and town development might clash.

Conclusions and Recommendations

There is undoubtedly a great need to popularise the provision of the National Building Code among all sections of people engaged in construction activity. A unified corpus of all building codes for implementation in the entire country ensures a regulated development of urban and rural construction of houses, and buildings of all categories and places them on a viable basis with a long-term perspective of durability, livability and safety.

Considering the fact that the regional variations of the country and local resources and preferences vary, there is need to review the provisions of the NBC periodically according as they run counter to them, particularly in the light of the backwardness, low income levels and inability of house builders and construction enterprises to conform to them. However, the interdisciplinary scientific criteria embodied in the NBC are required

to be grafted on to all constructions in the long run so as to prevent the deterioration of social capital prematurely.

A country-wide effort to modify the dated municipal bye-laws and building codes based on consultations has to be initiated in order to remove a major obstacle to the expansion of construction activity in keeping with growth factors. In modifying them, care has to be taken to see that the current requirements of town planning are fully met and rural-urban continuum is tackled in the field of housing. A modernistic corpus of concepts like the NBC cannot coexist with anti-quated pieces of legislation. This mutually stultifying situation has continued too long for the country to tolerate it any more.

There is a positive need to assess the impact of the imple-mentation of the National Building Code in all its aspects so that guidelines are supplied for its modifications wherever necessary on the basis of empirical findings.

Housing and the construction of building being the largest component of national wealth all aspects of it embodied in the NBC should become the subject of regular discussion at all levels. Western experience shows that the aspirations of the people get reflected in these discussions and assist the profes-sions engaged in translating them into plans, designs, and material production and also innovations to match these with scientific criteria. This requires a series of steps to educate public opinion and generate a pride in the citizens about the cities and its external physical appearance and above all train them in civic life.

LAND FOR TOWNSCAPING: SOME ESSENTIAL CONSIDERATIONS

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Howard imbued with a public spirit tried to build by private enterprise an entirely new town, industrial, residential and agricultural and since then there has been a lot of experiments with townscaping.

The emerging urban form in the country has been causing much concern and some of the workshops recently held have tried to spot-light the problems and perspectives for the future. Such a workshop (April, 1976)—Calcutta 2000 A.D.—ably piloted by Asok Mitra, highlighted imperatives for action as distinguished from aesthetic theories of town planning and utopian western traditions The workshop took note merely a futuristic overview of a city but like Ebenezer Howard was trying to grapple a crucial current social problem, *i.e.*, urban life within a framework of comprehensive planning and development.

Various disciplines connected with the concept of urban planning and development have been contending to place their points of view like engineering and surveying professions who try to give planning the bias for regulation and mathematical formulae while architects try to focus the aesthetic tradition of civil design. There is not much inherited tradition in the field to fall back upon in the country except the public health legislations conceived in the context of municipal self-government. This was, however, not a sustained exercise but like the utopians' disjoined efforts at urban reformism.

The present efforts in the country seek to make use of urban land for socially useful purposes and overall urban development. Physical planning can best serve such an objective of orderly urban development.

Concept of Physical Planning

The concept of physical planning relates to the requirement and availability of physical resources like land and water, physical environment in general and in particular the general layout of settlements and infrastructure.

Contrary to socio-economic planning, physical planning is concerned with the use of resources which are limited and which generally do not change or change slowly. It is, however, not possible to deal with the two approaches in water-tight compartments as both the physical and social patterns converge in many important sectors and are in a state of continuous transformation. It is, therefore, not possible to make exact projections concerning the future requirement for land, water and other physical resources. Hence, physical planning for the future must allow for flexibility with regard to land use and alternative development strategy.

As time progresses development policies will emerge not from a single planning document but from a series of documents and studies dealing with different aspects of development, modified on feedback from implementation.

During the planformulation which is an evolving, interactive process, continued discussions on the identification of goals and objectives take place till an overall picture emerges to be called a physical plan for townscaping.

Need for a Comprehensive Policy

Historically the growth of Calcutta as a primate city has had a deleterious effect on the developments of districts and sub-divisional towns in West Bengal since early thirties. The mean rate of population growth in these areas has been much lower than overall average of the state. In course of a few decades, degeneration has also set in the older parts of the city giving rise to urban blight and showing an obvious imbalance in spatial growth. The districts and sub-divisional towns have also been languishing thus presenting another kind of imbalance.

This structural imbalance was reflected in the level and scale of urbanization complicated by an absence of physical planning and control and the lack of a comprehensive policy with regard to land use.

A cursory look at the physical form in any districts and sub-

divisional towns will show a pattern of development which has occurred sporadically and arbitrarily. Round about Calcutta development has taken place solely guided by the availability of land, in some areas for rehabilitation of refugees. There has been considerable speculative sub-divisions of agricultural land for non-agricultural purposes with the minimum services and amenities. Some of these isolated vacant plots are derelict because of the speculation in land. If one analyses the pattern of land market it has been a sellers' market with skyrocketing land prices for the urban and urbanisable areas.

Development of land therefore followed its own logic of *laissezfaire* resulting in chaos with a mixture of urban blights and slums which is also in indication of deterioration and decay of the city and other urban areas thus adding burden to the economy.

A comprehensive policy is, therefore, necessary so that the planning advice in future is based on special knowledge of the potentials of the areas concerned or the impact the proposed development is likely to have on the overall economy and the people. This idea has given rise to the concept of production-oriented aspects of urban development.

Pattern of Urban Land Use

Ideally the pattern of land use can be categorised as—(*i*) Developed, (*ii*) Undeveloped, (*iii*) Urbanisable and, (*iv*) Land beyond urbanisable limits.

However, it is difficult to have such a clear-cut demarcation because development of land has not followed any clear pattern. There has been a lot of overlapping and inter-mixture due to misuse of resources and environment.

It is difficult to get an accurate picture of urban form for want of updated survey maps as in the case of Calcutta where the survey map was last done in 1903-14 by Smart and updated only in respect of a few peripheral areas up to the period of 1960-65. Apart from this there is a hierarchy of rights in land in Calcutta where the existence of *Thika* Tenancy (*i.e.*, right in huts etc. and not in the land) is a unique phenomenon.

The existing land use pattern of CMD can be summarised

as follows:

Land Uses	*Existing area in acres*
1. Residential	53,800
2. Transportational	18,130
3. Commercial	2,340
4. Industrial	11,350
5. Recreational	2,420
6. Public, Semi-public	5,170
7. Defence	2,510
8. Open land	2,32,280
Total	3,28,000

The development pattern of settlements of Calcutta Metropolitan District (CMD) shows a strong linear bias along the river Hooghly whereas in other areas it has more or less followed the railway alignments. The overall growth pattern, however, generally follows the above categorisation of land with the metro-core highly developed, intermediate zone developing and the outer periphery being predominantly rural or agricultural land. The major portion of CMD areas seems to be agricultural land or undeveloped areas comprising about 64 per cent of the total area. According to the definition, peripheral areas in the new urban ceiling law extend upto 8 k.m. from the outer limits of various municipal and non-municipal towns so far as Calcutta urban agglomeration is concerned and upto 1 k.m. for Durgapur—Asansol areas. This area being predominantly agricultural goes out of the purview of urban ceiling law so long as not covered by any master plan for purposes other than agriculture but should demand immediate attention for the purpose of orderly urban development. It is, however, necessary to strike a balance between urbanization and agricultural development so that one does not suffer at the cost of the other. There needs to be a strategy for guided urban development.

Nature of Major Disruptions

The nature of major disruptions that has been caused by misuse of environment and other than urban resources can be

depicted as follows:

Sectors	*Nature of Disruption*	*Areas of Disruption*
Land, Air, Water	Depletion	— Agricultural land — Recreational land — Vegetation — Species — Water Supply — Etc.
	Pollution	— Air Quality — Water Quality
Structures	Breakdowns	— Transportation — Waste Disposal — Visual Disorder — Noise — Etc.
	Shortages	— Housing — Community Facilities
People	Human Waste	— Employment — Education — Civil Order — Crime — Health — Nutrition — Etc.
	Social Failure	
Economy(Funds)	Waste	— National Economy — Budget
	Shortage	— Standard of Living — Recession — Inflation

The Need for an Appropriate Planning Law and Organisation

It is necessary to have a basic law on town and country planning to ensure both the public and private sectors in the matter of development of land under the overall guidance of a central coordination authority, *i e.*, all proposed new developments are channeled through one body.

This is all the more necessary because the number of agencies operating for CMD based in Calcutta work out to be 24. Apart from this there are varying norms and standards for various infrastructural facilities.

It will, therefore, be necessary as has already been suggested by Asok Mitra to have several clusters of municipal rural contiuum round Calcutta with a three-tier structure of organisation—"(1) at the lowest level a municipality should be in charge not only of its own area but also of the contiguous rural interstices which by virtue of their transportation, servicing and human settlement patterns conveniently and legitimately should fall within its ambit; (2) at the intermediate level the single municipality and its rural appendages with a number of similarly constituted and geographically contiguous municipal-cum-rural areas will make a large cluster of five or six such bodies, with its own confederate body of representatives from each constituent to take decisions of common and inter-woven action within the cluster; and (3) the Metropolitan Region itself becomes the appex body of these clusters each of which will enjoy considerable autonomy in decision-making, planning and executing and in personnel programmes and funds."

Goals and Objectives of Physical Plan

The principal goal of such an exercise should be to provide physical and socio-economic conditions which will ensure optimum individual fulfilment within an amenable environment. To reach such a goal, the major objective will be to define policies and establish a framework for the development of land (and also water and air), structures, people and the economy in the relationship as shown at p. 144.

On an evaluation it would be necessary to present alternative strategy to the use of land supplemented by the plans/programmes on structures, people and economy.

The Planning Methodology

That there cannot be any static 'blue print' proposal for urban development based on a fixed set of decisions is proved by the fact that it is now recognised to go in for decentralisation to satellite townships around Calcutta. This fits in with the poly-nuclear morphology of Calcutta where sub-centres are

Sectors	*A Framework for Development to be established for*
Land Air and Water	The use of Land (Zoning), Air and Water
Structures	Settlements (Urban and rural development) housing industry infrastructure community facilities transportation waste disposal etc.
People	population employment education health public participation (services) etc.
Economy	The economy to ensure that the community will be able to pay for its development goals.

located near market-centres forming Nodal points. It is suggested that this sub-centres which are potential growth-centres can blossom into functional centres of different sizes and densities.

The growth of new towns and satellite can be built on public land (as in Stockholm) along with the periphery of the city. Acquisition of land is a typical British concept and there may be other international experience in this field. In this respect the imposition of ceiling on urban land is a unique experiment. The peripheral areas in the new Urban Ceiling Law is, therefore, a critical factor in townscaping.

The process of plan preparation would obviously comprise the following:

(1) Appraisal and formulation of aims—policy, public attitude, potential, aims and needs.

(2) Information-gathering and analysis—socio-economic, physical, developmental strategy.

(3) Plan preparation—discussion, selection, modification and identification of areas.

It is possible to indicate the type of plan, and the character of the involved area under the following table of situation:

Type of Plan	*Character of area involved*
1. Structrue plan	
(*a*) Urban	Cities, districts, towns and urban areas
(*b*) Rural or urbanisable areas	Groups of settlement
2. Local plan	
(*a*) District	(*i*) Parts of a large town in a district.
	(*ii*) The whole of a small town—like sub-divisional town.
	(*iii*) Urbanisable areas
(*b*) Action Area	(*i*) New development
	(*ii*) Improvement
	(*iii*) Redevelopment
(*c*) Subject	Residential, industrial, recreational or other specific development problems.

The New Planning Philosophy

In the current situation local planning assumes importance as land would be available by the operation of Urban Ceiling Law. It was central to Howard's idea that new communities in new urban areas should be socially mixed, drawing and deprived poor from the inner city to make them more prosperous and happy. At the moment the planning thought is too much obsessed with 'controls'. The new planning philosophy and management system should keep in the forefront the "special needs of living" as Lewis Mumford has observed to make development socially purposive.

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LAND AS A RESOURCE—TAX POLICY

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It is a matter of common knowledge that most of our local bodies are in the dire financial straits. The inelasticity of the property tax coupled with the continued growth of expenditure on local government has naturally led to promote a search for additional methods of obtaining local revenue, which would strengthen the local authorities and make them less dependent upon Government grants. Limited resources certainly have impeded the efficiency of service such as maintenance and improvement of roads, drainage, sewerage, water supply, provision of public parks, schools, hospitals, etc. The search of additional and alternative methods of raising local revenue has been going on for sometime and will go on for several years. It is in this context that we have to think of our tax policy on vacant lands as a source of revenue to local bodies.

The property tax occupies a very important position in our system of local taxation and tax on lands and buildings constitutes the principal source of revenue. Property tax at present is based on the annual rental value of lands and buildings, *i.e.* it is either based on the actual rent which the landlord receives for the lands or buildings or it is based on a certain percentage of the cost of land.

In the city of Greater Bombay, all lands within the municipal limit are supposed to be subjected to the levy of property taxes. Lands are assessed on the basis of rents if they are let at reasonable rents, otherwise, on the basis of Contractor's Test, *i.e.*, by taking a certain percentage on the cost of land. Since, however, the rate of return on investment in Banks has been increased to 10 per cent we are assessing vacant lands at 9 or 10 per cent of their cost. Even the Central Government have agreed to the above rate for the purpose of assessment of their

properties, comprising of land with buildings. Vacant lands of the Government are not assesssable. The above rate is considered reasonable in the present market trend. In growing cities, land values tend normally to rise and outlying areas which give promises of early development are snatched by speculators who hold them for as long as their speculative hopes are realised. Profiteering in urban land may be in either of the following ways:

(*i*) In case of lands whose land use has changed from non-commercial to commercial use, there is considerable scope for exploitation of raising land values.

(*ii*) Vacant lands are sometimes held back without being developed by speculators as stated earlier thereby creating an artificial scarcity of land within the central core of the city.

The value of a particular piece of land may be divided into two parts:

(*i*) Its value for the present use to which it is being put.

(*ii*) Its development value which is the likely value if the land is put to a more profitable use. For example, the value of a piece of land which is at present being used for agricultural purposes is 8 annas per square yard and as a result of development which is likely to take place, this land can profitably be used for building purposes particularly for commercial use and may fetch several times of the existing value. The difference between these two values is what is commonly known as 'unearned increment' which is actually the appreciation of the value of any urban property which is not caused by the efforts of the individual property owner but of the community as a whole. It is, therefore, necessary that measures should be formulated to mop up the social surplus before the exploiters make away with the profits which they earned without any effort on their part so that the benefit of appreciation is shared by the owner with the entire community. The best way to make an impact on rising urban land prices and in the process to mop up more effectively and adequately the unearned increments is to levy an annual tax on such unearned

increments. It is only an annual and continuing charge that will not only mop up the social surpluses as they arise but also bring down or check the rising trend in the prices of urban land. For determining the annual tax liability, periodical assessment (say may be every 5 years) of urban land will have to be undertaken and the basis of assessment will be the capital value. A degree of progressivity in the rate-schedule of the tax would be necessary to spread its burden equitably over the various income groups. Other measures can also be adopted to solve at least to some extent, the problem of mopping up unearned increments and these are as under:

(1) Stamp duty on transfer of property: the basis of duty would be the value of the property as stated in the Registered Deed. This source of revenue should be made to local bodies.

(2) Betterment levy: the local bodies could recover betterment levy on such properties within a period of 10 to 20 years at certain percentage ranging from 2 to 9 of the estimated increase in the value of the property.

(3) Urban land tax: this tax may be recovered from every owner at certain rates of the average market value. For levying the urban land tax there should be different rates according to locality in which the urban land is situated as well as the use to which the property is put.

The total percentage of municipal taxes leviable in respect of properties in Greater Bombay at present is 6½ per cent of the rateable value of the property. Though the taxation may be considered as too high, it has little impact on the price of land. The main reason for soaring prices of land in Greater Bombay is the scarcity of vacant lands in the city due to its geographical situation.

Due to the recent enactment of Urban Land Ceiling Act, the Government will take over all surplus vacant lands at a nominal price not exceeding Rs. 10 per sq. mt. and the Government in turn might re-sell it according to market trend which was so far being reaped by private individual will now go to

Government Exchequer. This may perhaps tend to lower down the prices of land which will have adverse effect on municipal taxes.

TAXATION AND URBAN LAND VALUE INCREMENTS

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The use of taxation measures to capture the increments in urban land values is widespread; however, its success has not been spectacular. This is because the two main forms of taxation—one for recoupment of cost of local public improvements, and the other for mopping up of general land values in urban areas—emanate from two levels of government and their taxation objectives are not coordinated to bring about planned urban development. While the recoupment objective might be pursued by a local authority through the imposition of user charges in the context of a specific development scheme, the general influences contributing to an inflation of urban land values often escape the central (federal and state) tax net due to broader definition of wealth, capital gains or property for tax purposes. It is proposed to examine the effectiveness of the existing local and central taxes having a bearing on increments in urban land values and suggest modifications in the tax system to bring about an uniformity of approach in this direction. Such a tax system is relevant as long as the ownership of urban land remains in private ownership. A more effective alternative to taxation lies in socialization of urban land, through advance public acquisition and development. Even this process does not automatically internalize urban land value increments under public auspices, unless the developed land is auctioned back to the public by releasing the market forces. While this method could be quite successful in the outlying fringe areas, to the extent the initial seed capital for compensation is available, in the settled urban areas taxation remains the chief instrument with the public authorities to capture the

realized gains from increases in urban land values.

Recoupment Charges

The classic example of recoupment charges is the British betterment levy, designed to recover part of the land value increment due to specific public action. This method has been found to be of limited success, in Britain as well as in the erstwhile British colonies. In India, betterment levy is imposed by the urban improvement trusts and the experience in Calcutta shows that, over a 50-year period, it accounted for only about 4 per cent of the capital receipts of the improvement trust there. The Calcutta rates are fixed at 50 per cent of the increased assessed value—which is considered to be optimal for this type of tax. The real difficulty in the betterment levy lies in separating the general land value increases from the factors responsible for an increase in land value in a specific area on specific parcels of land. Moreover, the compensation payable by the public authorities cannot be delayed, while a betterment levy is generally realized over a period of years.

Apart from the betterment levy, two other planning charges—the development charge and the conversion tax—might fall under the category of recoupment charges. The development charge was introduced in Britain under the Town and Country Planning Act, 1947 to capture all "development value" of land—the difference between value in current use and value in the future as a result of planning permission. The experiment did not succeed as the land owners would not come forward to obtain such permission with a 100 per cent development charge. When the charges were brought down to 40 per cent—under the Land Commission Levy in 1967—the measure was more successful.

In France, experiment has been made with an equipment charge on dwellings levied on the basis of floor area constructed. Of late, however, the French local authorities are reported to have switched back to direct levies on developers. A number of public land development agencies still continue to rely on the equipment charge.

The experience with a wide variety of recoupment charges shows that such levies have had limited success. These are fraught with valuation difficulties and unless the rates are

moderate, the effective supply of land with development potential might dry up in the urban areas.

Mopping-up Taxes

Among the mopping-up taxes on urban land values, mention may be made of the capital gains tax imposed by the Central Government. Under this tax, capital gains arising out of land held less than two years is added to ordinary income and on land held for a longer period 65 per cent of the gain is taxed as ordinary income. All taxes on speculation of land define speculation in terms of period of holding; but experience shows that unless long-term holding is made costly, the speculators might wait out the short-term penal period. From this point of view, the current Swedish system, with full taxation on land held for less than two years and 75 per cent tax on land held longer, seems worth emulating.

In India unrealized capital gains are not taxed due to valuation difficulties, although a number of developed countries, such as Denmark, Italy and the U.K., periodically assess the imputed value of land at short intervals. The major problem in administering a capital gains tax on land values is the under-reporting of sales transactions. Suggestions have been made that the Government uses its power of preemption and offers to buy such land at the declared price. The Wanchoo Committee also recommended in a similar vein (Direct Taxes Enquiry Committee Report, 1971) and necessary amendments have been carried out in the Income-Tax Act. But, in the absence of a clearly formulated policy in this regard, with the consequent financial commitment, the right of pre-emption is hard to apply to check under-reporting of sale deeds. One suggestion (Kaldor) is to offer the land for sale in auction to the real estate developers and the state appropriating half of the excess price. In the absence of a developed real estate market, as in India, this method seems unworkable. To be effective, a central valuation agency for real estate assessment for all the levels of government seems called for, at least for the larger estates. It would then be possible to calculate imputed capital gains on land with certain degree of accuracy and credibility.

Among all the taxes on land value increment, the Taiwan tax is reported to be most successful. This is levied on a

recurrent basis with rates of 20 per cent if the increment is less than 100 per cent, 40 per cent increments between 100-200 per cent, 60 per cent on increments between 200-300 per cent and 80 per cent on all increments over 300 per cent. It seems that most of the collections were obtained at the higher rate brackets. This points out the necessity for a steeply graduated rate for this type of tax. The problem of splitting of estates is to be balanced against the disadvantages of decision-making in property transactions and, in practice, such attempts at tax avoidance are few.

The discussion on taxes on urban land value increments suggests that such a tax, to be successful, needs the following: (*a*) close collaboration with the land registration agencies and the taxing authorities, (*b*) creation of a central valuation agency for property assessment, (*c*) application of the rates on a progressive scale, and (*d*) a positive policy with regard to undervalued properties. Unless these are attended to in right earnest, mere taxation power to capture unearned increments in land values would not achieve any positive and significant result.

Conclusion

An examination of the betterment levy and the anti-speculation levy points out the basic limitations of taxation measures to control and capture unearned increments in land values. One also has to clarify one's value premises with regard to speculation and distinguish socially desirable and undesirable dimensions of such activity. Normal speculation and risk taking need not be penalized in an attempt to siphon off all unrealized gains. Also, real estate is but only one example of property. Unless similar policy is adopted for all property transactions, it would be difficult to sustain a healthy market in real estates. It seems that a separate tax on urban land value increments on a recurrent basis, with graduated rates, like the Taiwan tax, may succeed in controlling speculative transactions of urban land. To be effective, such a tax would call for a competent valuation agency and high degree of administrative capability. As a corollary this would also entail a positive policy with regard to pre-emption of undervalued real estate when these are actually sold out.

LAND AS A FINANCIAL RESOURCE FOR URBAN DEVELOPMENT

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Rapid urbanization is the hallmark of the present civilization. Much as we may fancy growth of decentralized centres of population through planned rural development, the tide of urbanization appears irreversible. The infrastructural facilities and the job-potential of the cities, particularly those with an industrial base, attract people in an ever-increasing number.

An orderly urban growth is highly capital intensive with a much lower financial cost-benefit ratio than most of the other fields of development. Government investment in urban development, therefore, receives a much lower priority and funds are diverted to more productive sectors of industry and agriculture. The urban areas, therefore, languish with meagre civic facilities and sub-standard housing, which diminish the quality of life and promote slums. A major portion of the Central and State budgetary allocations for urban development gets used up in applying the correctives by way of slum removal and improvement and making good the civic deficiencies, leaving insignificant resources for proper urban growth. Further, urban development and housing, being low priority areas in government's scheme of things, are easy victims to financial cuts and economy.

Swift and proper urban growth through traditional methods of financing is, therefore, an idle hope. After scanning the various viable alternatives for financing urban projects, we find that a real breakthrough in this behalf is possible, only if land

becomes the principal resource for urban development. The supply of land in any urban agglomeration is subject to several constrains, physical and financial, and as such for land to become a major source of finance implies formulation and acceptance of carefully thought out, long-term and well co-ordinated urban land policy. Urban land policy instruments include land acquisition, development, disposal and taxation policies as well as regulatory devices such as zoning, sub-division control, specifications of density and other like devices for regulation of land uses. It should, however, be mentioned in parenthesis that every policy, devised to yield maximum income from land, has to be subject to consideration of the broad socio-economic objectives adopted by the society and the state as well as to conform to the accepted norms of good town-planning.

Existing Means

Let us examine the position generally obtaining in our country in this behalf with a view to assessing the adequacy of policies of raising money from urban land. The present common forms of taxation of land raising resources from urban land are:

(*i*) Property tax on built-up and open land, depending upon their rateable value.

(*ii*) Betterment levy on built-up and open land, the value of which increases due to improvements in the services in the area.

(*iii*) Charge for change of land use, say from 'residential' to 'commercial' or 'industrial'.

(*iv*) Tax on plots of land, which can be built upon, but are kept vacant by their owners.

(*v*) Tax on unearned income (capital gains tax) from sale of property, including land.

(*vi*) Tax on transfer of property, including open land.

(*vii*) Disposal of old 'nazul' land (government land).

(*viii*) Acquisition of private land at a frozen pre-determined price and its disposal in the developed or undeveloped form after providing civic services and infrastructural facilities.

(*ix*) Annual ground rent for the land given on lease.

(x) Sharing of unearned income, accruing to the lessee of the leased land through its transfer by sale or otherwise.

Additional Means in the Offing

The following complementary measures are being considered in the wake of the Urban Land (Ceiling & Regulation) Act, 1976, but have not been given a final shape:

(*i*) Tax on built-up properties, particularly residential, covering land above the 'ceiling limit'.

(*ii*) Tax on luxury constructions.

(*iii*) Tax on 'vacant land' within the 'ceiling limit', which remains unutilized for construction purposes beyond a specified time. It may be similar to that in para 3(iv), but in a more concerted form.

It will be noticed that these measures are mostly *ad hoc* and sporadic and do not seem to form part of a well-knit overall policy. Some of them do not contribute directly or even indirectly to the pool of funds for urban development. The first four of the measures, given in para 4, are the traditional forms of revenues for the local bodies. The fifth one goes to Central revenues in the form of capital gains tax. The sixth is not uniformly applied, and its beneficiary organisation is also not fixed. In Delhi, a tax at the rate of 5 per cent of the value of the sale goes to the Municipal Corporation. The income from the seventh source is appropriated by the State Governments in some cases and in others by a body, like the Improvement Trust or a Development Authority, specially nominated by the State Government for the purpose. The last three measures are comparatively new, but are now widely prevalent in varying forms and institutions, receiving benefits from them and differ from place to place.

The Delhi Model

For the first time, an attempt has been made in Delhi to formulate a well-knit land policy. Efforts have also been made to ensure that most of the income raised from land is diverted to urban development. The Master Plan for Delhi with a 20-year projection from 1961 to 1981 was statutorily promulgated in 1962. The following constitutes the main thrust of land policy

in Delhi:

(*i*) Practically, all the open land within the urbanizable limits of the Master Plan had been notified for acquisition u/s 4/6 of the Land Acquisition Act, 1894 for the 'planned development of Delhi' in the early sixties. The final acquisition of land has proceeded gradually according to the annual development needs. The advantage in notifying the entire open land is that the cost of its acquisition has been pegged at the level of the market price obtaining on the date of notification u/s 4 of the Land Acquisition Act. Out of 68,000 acres of notified land, about 38,000 acres have so far been acquired by the Delhi Administration and handed over for development and disposal to the various agencies, like the Delhi Development Authority, Municipal Corporation of Delhi, Public Works Department, Cooperative House Building Societies, Cooperative Industrial Estates, etc.

(*ii*) The private colonizers, who were indulging in speculation and profiteering in land, have been completely eliminated. Whatever financial benefits flow from the disposal of acquired land are utilized for a social purpose, namely, planned development of Delhi.

(*iii*) The ceiling on the size of the residential plots, developed and disposed of under the scheme, was initially fixed at 800 sq. yds., which has since been reduced to 400 sq. yds.

(*iv*) Besides governmental agencies, the community has been involved in the development and disposal of land through cooperative societies for plot-housing, group-housing and industrial estates.

(*v*) The residential plots, developed by the government agencies or the cooperative house building societies, are allotted only to those who themselves, or their spouses or their dependent relations, including unmarried children, do not own any house/plot, in full or in part, in Delhi/New Delhi/Delhi Cantt. This restricts amassing of urban property in Delhi in private hands.

(*vi*) Land for civic services and facilities, like roads, parks, drains, hospitals, schools, etc., is made available to the

development agencies either free or at low cost.

(*vii*) The 'land use' for all the lands has been legally prescribed by the Master Plan and Zonal Development Plans, framed thereunder for ensuring an orderly growth of the town.

(*viii*) The owner of the acquired land, fulfilling certain conditions, can obtain on lease 'alternative plots' (residential or industrial) on fixed premium. The rest of the developed plots are disposed of through open auction, the highest bidder for the premium getting the lease.

(*ix*) The lessee of a plot is required to pay 2.5 per cent of the premium as annual ground rent, revisable after every 30 years.

(*x*) Transfer of leased plot is subject to the prior permission, not usually granted within first 10 years of lease, and payment of half the unearned income derived from the transfer of land.

A 'revolving fund' with government capital of about Rs. 12.3 crores has been floated for funding the scheme for 'large scale acquisition, development and disposal of land' in Delhi. The expenditure on acquisition and development of land is met from the 'revolving fund', and the premia from leasing the plots, through allotments on pre-determined rates or open auction, are credited to the fund, while the annual ground rent for leased plots is credited to the government revenues. The arrangement obviates the necessity for annual appropriations from the government revenues and ensures ploughing back the monetary benefits from the disposal of land as well as easy funding of non-profit making essential development projects, like beautification of the town and re-development of villages, swallowed by the urban sprawl. About Rs. 72.7 crores were spent on acquisition and Rs. 47.6 crores on development of land from the 'revolving fund' during the 15 year period of 1961-76. The receipts for the fund during this period totalled Rs. 109.2 crores. The financial operations under the scheme during these 15 years have been of the order of Rs. 125 crores. The value of the stock of land held on March 31, 1976 was about Rs. 30 crores.

The modalities of the Delhi scheme, supported by the special financing device of the 'revolving fund', have made the projects

self-sustaining. Moreover, Government have earned a substantial sum of money in the form of ground rent, and it has been possible to provide land for civic services and educational and other institutions at a low cost.

Suggestions for Re-orientation of Delhi Model

The Delhi scheme, however, needs reorientation on the following lines for further mobilization of resources:

(*i*) There is considerable time-gap between the acquisition and disposal of land after development, locking up the investment on acquisition for long periods. This could be avoided by prospective sale of land. The development plan of a residential colony, a commercial complex, an industrial estate or an institutional area could be prepared well in advance, and while the land acquisition proceedings are at an advanced stage, the plots could be disposed of, realising a part of the premium to meet the compensation cost. The remaining premium could be realized in instalments to meet the development cost. This has already been experimented by State, like Haryana, and a provision for it had also been made sometime back in the Delhi scheme. The planning and development procedures will have to be, however, considerably streamlined for obtaining full benefits of the device, which, though new to governmental agencies, is the usual practice with the private colonizers.

(*ii*) Charging of ground rent at a uniform rate of 2.5 per cent of a premium of the leased plots, though seemingly sound in theory, results in an anomoly in practice. The premium for plots, allotted to the members of cooperative societies and owners of acquired land, comprises only the cost of acquisition and development of land and certain other fixed charges. On the other hand, the premia for the plots, disposed of through open auction, are determined by the highest bids, which are much more than in the case of plots, alloted at predetermined rates. The difference in premia for the same types of plots is reflected in the annual ground rent, which is neither necessary nor desirable. Ground rent

could be fixed at a flat or sliding scale, and thereby avoiding perpetuation of the difference in initial lease-cost. This would also bring more revenue.

(*iii*) The premia goes to the 'revolving fund' while the ground rent is credited to the Government revenues. Since the area of land for acquisition and development is limited, a time may soon be reached, when the resources for urban development through premia may considerably dwindle and finally dry up. Moreover, the income from premia may not be enough to sustain an ambitious urban development programme. So, it is necessary to put all revenues from the scheme, including ground rent into the common pool for the implementation of the scheme.

(*iv*) The system of revision of annual ground rent after 30 years has become outdated with the fast rate of diminition in the real value of money and corresponding increase in the intrinsic value of land and constructions thereon. The present system, which derives its origin from the traditional method of revision of ground rent for leased nazul land, has also resulted in the land and properties, developed earlier and situated at better sites with better facilities and services being taxed at much lower rate than those in fresh development areas. Amsterdam (The Netherlands), with an 80-year history of socialization and leasing of land, has recently introduced a new method for revision of annual ground rent after every 5 years, keeping in view the real value of the money. The provisions of its standard lease in this behalf are given in Annexure I. They could be adopted in a suitable form by us for revising the annual ground rent more frequently and thereby increasing revenues. The real benefit from the innovation will flow only after the lessee is legally permitted to enhance the rent of the property by an amount, equivalent to the increase in the ground rent.

New Directions—Some Suggestions

The Third Five Year Plan emphasized that publicly owned land should be leased and not sold. While this is the policy

being followed in respect of all sale of land now by the public authorities, it has given rise to a suggestion that existing freehold land should be converted into leasehold by a law. The leasehold basis has the following advantages:

(*i*) It allows public authorities to exercise a greater degree of control over land-uses.

(*ii*) It provides the public authorities with more effective means to exercise control over land values as well as appropriate future increments in land values through pricing and taxation policies.

On the other hand, freehold system is basically unprogressive and tends to prove cumbersome to the planning process. The proposal has considerable merit and should be pursued seriously.

The value of property appreciates due to Central, State or local government's action and/or by other factors such as the general activity of the community or the general level of prosperity. It is, therefore, argued that public policy should ensure that a substantial portion of development value created by the community returns to the community. Though we have been aware of this concept and some kind of betterment levy and capital gains tax are being realised by local bodies/development authorities and the income tax department respectively, these measures are a pale shadow of the betterment levy charged in most of the advanced countries. This is essentially because the full implications of the concept as an effective instrument of an enlightened urban land policy has not been fully realized. In his book 'Land Policy' John Ratchibbe has summed it up as follows in the context of situation in U.K.:

"Firstly, the widespread increase in land values emerges as a result of general social and economic activity; it is not attributable to the actions of individual owners of land. These enhanced values should, therefore, not accrue to private landowners but be collected by the community at large. Secondly, the nature of planning and the practice of public authorities inevitably leads to an extensive redistribution of wealth throughout society and of necessity this wealth is unevenly and fortuitously spread, benefiting some but not others. A solution aimed at mitigating the harshness and inequity of this disparate distribution should be

sought. Thirdly, it is thus necessary to recoup betterment in order to make payments alleviating worsement. Fourthly, the excessive speculation within the land market inherent in inflationary circumstances is exacerbated in the absence of a tax on betterment. Unchecked and unclaimed, these inflationary and speculative spirals place a heavy burden upon local authorities, and accordingly ratepayers, in the purchase of land for public development. Fifthly, funds eventually become available for publicly sponsored development projects thus permitting the internalizing of future potential betterment. And, finally, through remuneration, comprehensive planning is facilitated and the tight grip of private development agencies is loosened.

"Once the principal of betterment collection is established, it is necessary to decide the rate at which it is levied Many varying levels have been mooted or practised. The Liberal government led by Lloyd George introduced separate and selective taxes on a range of different circumstances. The Uthwatt Quinquennial Scheme suggested 75 per cent, the Town and Country Planning Act 1947 implemented a 100 per cent charge on development value, the recent Land Commission levied betterment at 40 per cent with a view to increasing it to 45 per cent than 50 per cent and possibly higher, Capital Gains Tax has been imposed at 30 per cent. Development Gains Tax even higher, and proportions such as $33\frac{1}{3}$ per cent, 60 per cent and now $66\frac{2}{3}$ per cent and 80 per cent have all been advocated at one time or another.

"While it is theoretically sound to recoup total betterment, it has certain obvious practical difficulties. The immediate imposition of 100 per cent levy is said to stultify the land market and discourage essential investment and development. Although the performance of the 1947 Act appears to support this claim, it is frequently forgotten that other post-war exigencies of materials, construction and capital exercised a debilitating effect upon development. Nevertheless, it is naturally unwise to ignore or deny evidence presented by past experience despite forceful arguments favouring full recoupment unless the functioning of free market process is to be radically adjusted or abandoned entirely."

The recommendations (Annexure II) of the United Nations Conference on Human Settlement (Habitat), held at Vancouver, Canada, in June, 1976 are very pertinent for re-capturing the 'plus value' of the urban land. The Prime Minister, Smt. Indira Gandhi, while speaking at the recent Gauhati Congress Session underlined the need to examine this facet of our urban land policy.

Speedy acquisition of land at reasonable rates is the *sine qua non* for development through public bodies. The Urban Land (Ceiling & Regulation) Act, 1976 introduces a new concept and system for speedy taking over excess 'vacant' land above the ceiling limit in specified urban agglomerations at a limited cost, payable in 20 years. The new law has, however, restricted applicability, and its results have yet to come. The Land Acquisition Act, 1894 continues to be the major instrument for acquisition of land for all practical purposes. Though the Land Acquisition Act provides for and, in practice, has been utilized for freezing the rate of compensation at a particular date with reference to the notification under Section 4, it has grown outdated to meet the urban development needs as well as in view of the 25th Amendment of the Constitution. Though the expression 'compensation' in Article 31 has been substituted by the term 'amount' and the Parliament has been vested with unrestricted powers for giving effect to the Directive Principles of State Policy through this amendment of the Constitution, the land acquisition awards continue to be on the basis of market price as on the date of notification under section 4 of the Land Acquisition Act and the entire process of acquisition continues to be time-consuming with ample scope for dilatory tactics. It is necessary either to amend the Land Acquisition Act or bring in an entirely new legislation for meeting the particular needs of urban development by way of quick acquisition of land on a limited payment, spread over a number of years.

Finally, it is necessary to combine proliferation of avenues for raising resources from land with streamlining the procedures for collection of taxes, rates and charges on land and reducing the number of agencies for recovery of the same. At present, there are four to five agencies in the field, who have their own standards and methods for assessment and realization of the

taxes and charges. Their numbers will naturally go up, if we consider the avenues for additional resources in isolation. A single agency for recovery of all taxes and charges on land may be difficult to comprehend, but it should be possible to limit the number to two or three, though the revenue derived from the various measures could be assigned to various bodies.

Annexure I

The provisions given in the perpetual leases for land in Amsterdam, the Netherlands regarding five-yearly review of ground rent

The ground rent shall be adjusted, block by block, to the trend in the general price level within the lease period after the passage of 5, 10, 15, 20, 25, 30, 35, 40 and 45 years from the date of commencement of the lease. The adjusted ground rent is found by multiplying the current ground rent by an *adjustment coefficient* determined for each calendar year. The adjusted ground rent thus arrived at be notified as soon as possible to the leaseholder and mortgagees. Delayed notification neither discharges the leaseholder from his obligation to pay a higher ground rent nor disqualified him from his right to reimbursement.

The *adjustment coefficient* for a particular calendar year is calculated by means of the formula:

$$\frac{a}{b} \bullet \frac{c}{d}$$

a is the value of the domestic output (net, market prices) in *current* prices two years prior to the calendar year referred to in this paragraph, as published by the Central Bureau of Statistics; *c* is the corresponding value seven years prior to the calendar year referred to in this paragraph;

b is the value of the domestic output (net, market prices) in *fixed* prices two years prior to the calendar year referred to in this paragraph, as published by the Central Bureau of Statistics; *d* is the corresponding value seven years prior to the calendar year referred to in this paragraph.

If, for any reason, one or more of the values represented by the letter *a*, *b*, *c* and *d* are either not known or are not known in time, the *adjustment coefficient* here referred to shall be determined by the City Council in a manner corresponding as closely as possible to the method of calculation described in this paragraph.

Should the amount of the five-yearly ground rent adjustment, expressed as a percentage, exceed the total percentage of the statutorily permitted rent increases for the buildings on the land since the current ground rent became effective, then the percentage of the ground rent adjustment shall be reduced until it is equal to the percentage of the statutorily permitted rent increases referred to.

Annexure II

Recommendation No. D. 3 in Chapter II of the Report of Habitat: United Nations Conference on Human Settlement: Vancouver, 31st May to 11th June, 1976; Recommendation for National Action

Recapturing Plus Value

(*a*) Excessive profits resulting from the increase in land value due to development and change in use are one of the principal causes of the concentration of wealth in private hands. Taxation should not be seen only as a source of revenue for the community but also as a powerful tool to encourage development of desirable locations, to exercise a controlling effect on the land market and to redistribute to the public at large the benefits of the unearned increase in land values.

(*b*) The unearned increment resulting from the rise in land values resulting from change in use of land, from public investment or decision or due to the general growth of the community must be subject to appropriate recapture by public bodies (the community), unless the situation calls for other additional measures such as new patterns of ownership, the general acquisition of land by public bodies.

(*c*) *Specific Ways and Means Include:*

(*i*) Levying of appropriate taxes, *e.g.*, capital gains taxes and betterment charges, and particularly taxes on unused or underutilized land;

(*ii*) Periodic and frequent assessment of land values in and around cities, and determination of the rise in such values relative to the general level of prices;

(*iii*) Instituting development charges or permit fees and specifying the time-limit within which construction must start;

(*iv*) Adopting pricing and compensation policies relating to value of land prevailing at a specified time,

rather than its commercial value at the time of acquisition by public authorities;

(*v*) Leasing of publicly owned land in such a way that future increment which is not due to the efforts by the new user is kept by the community; and

(*vi*) Assessment of land suitable for agricultural use which is in proximity of cities mainly at agricultural values.

URBAN LAND CEILING ACT : EMERGING PROBLEMS AND VISTAS IN URBAN DEVELOPMENT*

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In recent decades, land values in our cities have skyrocketed to dizzy heights. Land values in Bara Bazaar, Dalhousie Square and Chowringhee of Calcutta are in the range of 1.0 to 1.5 lakhs of rupees per cottah and the land at Nariman Point of Bombay was sold recently for Rs. 3,000 to Rs. 5,000 per sq. yd. The spiralling increase of land values, unrelated to any perceivable economic factor, is largely explained by speculation in land. The speculators of lands have been cornering large chunks of lands at low prices in our cities and selling them as developed plots at exorbitant prices. Substandard and unregulated land colonisation and construction of luxury mansions has occurred on an extensive scale in our cities often through the investment of black money.

Bulk acquisition of land, its development and disposal to the community by public authorities is often advocated as a remedy for the above situation. Apart from curbing soaring land values, bulk acquisition of urban land ensures availability of sufficient land for all purposes in future at a reasonable price and also facilitates undertaking of corporate development projects on an extensive scale.

European countries like Norway, Sweden, Denmark and Netherlands have a long tradition of public ownership of extensive urban lands. Cities like Amsterdam and Stockholm had the foresight to acquire at the beginning of this century extensive vacant lands outside the built-up areas and could

*The author's article "Urban Land Ceiling Act: A Panacea for Urba Crisis", Journal of Institution of Town Planners (India) May, 1976, contained his preliminary ideas on the subject.

undertake planned development of residential colonies and other uses, as and when the demand arose. In Asia, Delhi has the unique distinction of being the only metropolis to have implemented a policy of bulk acquisition.

Urban Land Ceiling Act: A Unique Measure

Against the background of soaring land prices and land speculation, referred to above, the Urban Land (Ceiling & Regulation) Act 1976 (ULCR Act) is a welcome and timely measure.

The ULCR Act is a unique legislative measure in more than one way, *viz.*, (1) Firstly, it is unprecedented and nowhere else in the world has such an enactment been made so far.

Secondly, never before, perhaps, in the legislative history of our Parliament has a Bill, having such far-reaching consequences on the way of life, national economy and the citizen's fundamental rights, been passed with such undue haste as the Urban Land Ceiling Bill. The Bill was introduced on 28th January, 1976 in the Lok Sabha (wherein there was a few hours debate) and rushed through in record time through all stages of law-making till it received President's assent on 17th February, 1976. The Bill was never referred to a Joint Select Committee. It was, of course, in the nature of things that such a legislative measure, affecting adversely certain vested interests, ought to be enacted rather suddenly so that such interests may not indulge in acts designed to circumvent the Act.

Thirdly, no other enactment has met with such vehement criticism in recent history as the ULCR Act, which has become highly controversial. Some critics consider it ill-conceived, ambiguous and obscure in details and procedures and some even advocate a withdrawal or a suspension of the Act. Such a reaction was inevitable in a situation wherein public opinion was not adequately prepared for the legislative reform.

The 'Hindu', in its editorial dated 15th December, 1976 has summed up the public reaction to the Act admirably thus: "This hastily enacted legislation bristles with anomalies, seeks to impose irksome restrictions on the ownership and transfer of property, fixes an unimaginative arbitrary ceiling, all clothed in intricate official jargon and confusing and contradictory provisions that have provoked wide controversy. Lawyers and

jurists who have sought to interpret the key sections find themselves as much at sea as the lay citizens... Official clarifications offer little help and less solace. The elaborate complicated form that has to be filled by the helpless urban property owners, is the last straw to break his back". However those at the helm of affairs and particularly the officials of the Works and Housing Ministry (Government of India) are showing remarkable courage, determination and dexterity (as revealed by the various guidelines issued by them) in clinging on to the ULCR Act like the proverbial 'Casablanca' on the burning ship. They are maintaining, with considerable skill, a delicate balance between making adjustments to take care of practical difficulties and hardships arising from the operational aspects of the Act while at the same time not sacrificing the basic objectives and spirit of the Act.

Historic Background

The victims of the ceiling laws on agricultural holdings complained of the injustice of a reform which expropriated their lands but did not interfere with the owners of urban properties. In 1967, the Congress passed a resolution at Delhi as follows: "The pattern of conspicuous consumption and wasteful display which increasingly characterise some of the urban areas are all out of place in a socialistic society. There is thus compelling need to impose limitations on urban property. Concrete steps should therefore be taken for placing restrictions on individual holdings of urban land for preventing racketeering in land in urban areas". The 1971 election manifesto of Congress stated: "Limitations must be placed on urban property. Measures will be taken to curb anti-social racketeering in the purchase and sale of land". The 25th Amendment to the Constitution paved the way for ULCR Act which was in pursuance of the above pledges.

Socialisation of urban lands was declared to be the Government's objective in the Five Year Plans and in the policy statements by our leaders though the precise meaning of 'socialisation of urban land' was never clearly enunciated by anyone.

The Central Government first circulated to State Governments a draft bill imposing a ceiling limit of Rs. 5 lakhs on

urban property holdings. The State Governments were generally in favour of the bill. But the problem of taking over, managing and disposing of urban properties, affected adversely by the draft bill, were considered colossal. Hence, while the original pledges of the Government related to urban property, the ULCR Act imposes a ceiling only on private holdings of vacant lands. However, the Damocles Sword of a ceiling on urban immovable property will continue to hang over the heads of the citizens.

From the above, it will be clear that it was not the urban chaos or crisis which exists in our country nor the need for bulk acquisition of urban land so as to secure an orderly growth of our cities nor the concept of urban land reforms, widely practised in Latin American countries, that led the Government to enact ULCR Act. The initial stimulus for the Act came from the opponents of agrarian reforms legislation and this was reinforced by the need to check racketeering and speculation in land by antisocial forces in urban areas and, more recently, by the emphasis under 20-point plan to provide houses for the weaker sections of the community. Even the basic approach in the ceiling laws on agricultural holdings of taking over the surplus land after excluding the portion within the ceiling limit of the holding was incorporated in the ULCR Act and, thus, the concept of a ceiling limit on the land was transferred from the agrarian rural scene to the urban scene without giving any careful consideration as to whether socialisation of all vacant urban lands would have been a better remedy than a ceiling limit.

Concept of Urban Land Reforms

It would be appropriate to refer here briefly to the concept of Urban Land Reforms, since the Ceiling Act is essentially a step in the direction of Urban Land Reforms, though that might not have been in the minds of the law-makers.

Agrarian Land Reforms do alleviate the sufferings of the villagers who depend on farming but they do not help in any way in improving the lot of the multitude of migrants from the rural areas to the urban areas. So as to solve the critical problems arising in urban areas due to the mass exodus of rural migrants thereto, one has to resort to not only urban

planning and development but also to urban land reforms. Urban Land Reforms also help in solving the problems of poverty and unemployment of the urban poor. This significance of urban land reforms has been realised particularly in Latin American countries and considerable progress achieved in this regard.

Urban Land Reforms means the improvement of urban economic institutions such as urban land ownership, holdings and tenancy, regulation of land values, property taxation, availability of pre-emption right and improvements in land acquisition, and development and disposal process. Such reforms are necessary for ensuring the availability of land in adequate quantity for reasonable prices at the right time to public authorities and individuals.

To cite an illustration, Cuba has a National Urban Reform Council with its different provincial councils. The Law 218 of 1959 established the procedure for compulsory sale of all vacant urban lots. As per Law 691 of 1959, the price of all vacant urban lots could not be higher than $4 a sq. mt. Any citizen could enforce the sale of a vacant lot by proving his intent to construct a house, or a factory, or an office building within 18 months. Urban Reform Law 1960 defined criteria to be followed for indemnifying owners of rented housing, which has become the property of tenants. The sale price is related to age of housing and the rent, being paid, and the compensation is never to exceed $600 a month. Slums and lodging houses were expropriated without compensation. The law prohibited the exchange or sale of any real property without the permission of Urban Reform Council.*

It is surprising that the potential of urban land reforms for solving urbanisation problems has received insignificant attention so far in our country. Keeping in view the drastic nature of urban land reforms of Latin American countries, it will be realised that our Urban Land Ceiling Act is only the first faltering step taken in the direction of Urban Land Reforms.

Indian Constitution and the Urban Ceiling Act

Though 'land' is mentioned in the State List in Schedule

*Maruja Acosta and Jorge E. Hardoy, 'Urbanisation Policies in Revolutionary Cuba', *Latin American Urban Research* Vol. 2, 1972,

VII to the Constitution, the Urban Land Ceiling Act was enacted by the Parliament due to the adoption of resolutions by the legislatures of 11 States requesting the Parliament to enact such a law in the manner specified in Article 252.

The Urban Land Ceiling Act can be said in a sense, to be a step towards implementation of one of the Directive Principles of State Policy, as enshrined in Articles 39(b) and (c) of the Constitution, which refer to making ownership of resources subservient to common good and preventing concentration of wealth.

The Urban Land Ceiling Act may appear to interfere substantially with the fundamental rights of the citizen 'to acquire, hold and dispose of property' as guaranteed in Article 19(1) (f) and also of Article 31(2). But Article 31-C, which was inserted by the 25th Amendment, gives immunity to laws enacted for securing the principles specified in Articles 39(b) and (c) from judicial scrutiny as to whether they would violate Articles 14 (equality before law), 19 and 31. Besides, the Parliament has put the Ceiling Act in the Ninth Schedule to the Constitution so as to protect it from such a judicial scrutiny.

It may also be stated here that, during the emergency, the right to move any court for the enforcement of fundamental rights had been suspended by the President under the powers conferred by Article 359 of the Constitution.

A High Court Invalidates Urban Ceiling Act

Despite the above provisions in the Constitution, the Andhra Pradesh High Court (B.J. Dewan, CJ and Chenna Kesav Reddy, J) in Valluri Basavaiah and others *Vs.* Union of India and others, had restrained the Centre and the State Governments from enforcing the ULCR Act in any of the urban agglomerations in the State (the judgement was delivered on 3rd December, 1976).

The petitioners had argued that they were compelled by the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holding) Act, 1973 to compute all their lands including the lands covered by the present dispute as agricultural land holdings and to make a declaration on that basis. However, for the purpose of ULCR Act, the lands were being

treated not as agricultural lands but as vacant lands coming within the definition of urban immovable property and on that basis, taken away. By combined operation of these two Acts, most of the agricultural lands belonging to the petitioners would be taken away.

The petitioners also contended that the relevant Master Plans for the five urban agglomerations in the State, *viz.*, Hyderabad, Guntur, Vishakhapatnam, Vijaywada and Warrangal had not been prepared in accordance with the law and were, therefore, not valid hence the provisions of Central Act 33 of 1976 did not apply to them.

The petitioners argued that, in the present case, the Parliament, *i.e.*, the delegate, had exceeded the specific powers given to it in two ways:

(*a*) When the legislatures of different states in India considered the question of ceiling on urban lands, they passed the resolutions for ceiling on the basis of valuation of urban land as distinct from the area of vacant land. But the Parliament ultimately had passed the law imposing a ceiling not on valuation of land but with reference to the area of vacant land;

(*b*) Whereas the houses of legislatures had empowered the Parliament by respective resolutions under Article 252 to enact a law imposing a ceiling on urban immovable property, the Parliament has enacted a law which imposes a ceiling on urbanisable land also, as distinct from urban land.

The 'legislature' of a state, under Article 168 of the Constitution, consists of a Governor and one or two houses, as the case may be. In the instant case, the petitioner argued that the Governor of Andhra Pradesh had never expressed his view that it was desirable that this particular matter should be entrusted to the Parliament.

The Solicitor General argued that, during the emergency, the Parliament had the necessary competence to enact the impugned Act under Article 250 independent of the resolutions passed under Article 252.

The High Court rejected the theory of Parliament being the delegate of the states while acting in pursuance of resolutions passed in accordance with Article 252 and held that the principle

of widest and plenary powers of a legislature applies as much to Article 252 as to the remaining Articles occurring in the Articles 245 to 255. Thus, the Court held that while acting in pursuance of the resolutions passed under Article 252, the Parliament can enact any law regulating that matter and it cannot be said that the Parliament should have dealt with it in a particular manner.

The Court further held that when the Parliament was empowered to regulate the matter relating to the imposition of a ceiling on urban immovable property and acquisition of that property in excess of the ceiling and all matters connected therewith, and incidental thereto it got the power to enact a law not merely to deal with land which was actually urban at the time when the resolution was passed but also to deal with land which was likely to become urban in the foreseeable future. That was necessary, according to the Court, if town planning and regulation of future use were to have any meaning. Thus, the Court overruled the first contention of the petitioners.

Applying the principle of interpretation of statutes applicable to all statutes including Constitution that if a distinction is made in one and the same context between two different institutions, full effect to that distinction must be given, the High Court held, with regard to the second contention of petitioner that in Article 252 (1) of the Constitution, the word 'legislature' is used in the first part and the words 'houses of legislatures' is used in the second part and, therefore, full effect must be given to the distinction between the two. Under these circumstances, the Court held the word 'legislature' in Ist part of Cl. (I) of Article 252 as referring to legislatures as defined in Article 168, *viz.*, Governor and the houses of legislature.

The Court observed that the only way in which the legislature of a State consisting of Governor and one or two houses, as the case may be, can express its view that it is desirable to enact a law regulating a particular matter, is by enacting a law and passing an Act to that effect. In the present case no such Act had been passed by the State legislature consisting of the Governor and the two houses, expressing the desirability of having the matter of imposing of a ceiling on urban land regulated by the Parliament. Only the Legislative Assembly

and Legislative Council of the State had passed resolutions and that was not sufficient. On this ground the High Court held Acticle 33 of 1976 to be not enforceable in the State of Andhra Pradesh. The Court also rejected the argument of Solicitor-General that the competence of the Parliament to enact the law in question could be referable to Article 250.

The Court also rejected the Solicitor-General's second contention that Section 10, dealing with acquisition of land and the connected sections of the Act, could be enacted by the Parliament under Entry 42, List III of 7th Schedule and that these sections, being the heart of the whole scheme of the Act, the whole of the impugned legislation was within the competence of the Parliament.

Further, the High Court held that, in any event, even if their first conclusion is held to be erroneous, Act 33 of 1976 can never apply with reference to the Master Plan for Warrangal Municipality or the peripheral area thereof, because the Master Plan for Warrangal has not been prepared in accordance with the law, *i.e.*, Hyderabad District Municipalities Act, 1956, inasmuch as it contained no indication (as required by Section 244 Cl. iii of the Act) regarding the lands to be compulsorily acquired and is, therefore, not a valid Master Plan. The Master Plans for rest of the four urban agglomerations in the State were held to be valid Master Plans.

The respondents have now filed an appeal against the High Court's decision to the Supreme Court.

The decision of the High Court, in the instant case, during the Emergency even though the ULCR Act has been kept in the Ninth Schedule, speaks volumes of independence of the judiciary in our country.

Broad Objectives of the Act

The Statement of Objects and Reasons attached to the Bill when introduced in the Lok Sabha reads as follows:

"A bill to provide for the imposition of a ceiling on vacant land in the urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith with a view to preventing the concentration of urban land in

the hands of a few persons and speculation and profiteering thereon and with a view to bringing about an equitable distribution of land in urban agglomeration to subserve the common good."

Basic Concepts and Restrictions Under the Act

The Act was initially applied to 11 states, *i.e.*, Andhra Pradesh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Orissa, Punjab, Tripura, Uttar Pradesh and West Bengal and all Union Territories and it has been subsequently adopted by Assam, Bihar, Manipur, Meghalaya and Rajasthan.

The ULCR Act is made applicable to 73 towns and cities (out of 142 class I cities of 1971 Census) classified into four categories A, B, C and D with a graded ceiling on vacant land in urban agglomerations varying from 500 to 2000 sq. mts. depending on the category of the city. The ceiling limit is applicable to the peripheral area of agglomeration ranging in width from 1 km. to 8 kms. (the latter being for category 'A' cities).

There is a proliferation of notional concepts like 'urban agglomeration', 'vacant land', 'land appurtenant,' 'urban land', and 'urbanisable land' in the Act. The concepts of 'urban land' and 'urbanisable land' figure only in Section 27 of the Act and could have been perhaps avoided.

The concept of 'vacant land', which is of crucial importance in understanding the scope of applicability of the ceiling limit has been defined by stating what it is not rather than what it is (in the Upanishad tradition of 'neti-neti'). It means all land in an urban agglomeration excluding: (1) agricultural land (unless shown for non-agricultural use in the Master Plan); (2) land on which construction of buildings is not permitted as per regulations; (3) land occupied by the buildings, as per sanctioned plans (*i.e.*, land on which unauthorised construction are located would also be vacant land); (4) land appurtenant to the building; (5) land normally used for keeping cattle other than for purpose of dairy-farming or breeding livestock. Land appurtenant means such land as is required to be kept open as per regulations (subject to a maximum of 500 sq. mts.) and another 500 sq. mts. of land contiguous to it,

Any person, family, company, firm, association, private trust, Hindu undivided family or housing group owning vacant land in excess of ceiling limit is affected by the Act.

The Act also imposes a ceiling on the plinth area of all future dwelling units varying from 300 sq. mts. in the categories of A and B towns to 500 sq. mts. in C and D.

The procedure for acquisition of excess lands is broadly similar to the provisions of the Income-tax Act. Returns on excess lands should be filed by specified date, notices are then served by the competent authority and objections considered. The Government acquires the vacant lands upon publication of the final notification by the competent authority.

Taking advantage of 25th Amendment, the Act has departed from the 'market value' as the basis for compensation and it does not also provide for payment of an illusory amount.

The Act provides for a compensation for the surplus land beyond the ceiling limit of an amount equal to $8\frac{1}{2}$ times the net average annual income actually derived from such land during five consecutive preceding years. In cases where there is no such income, the compensation will be based on a rate not exceeding Rs. 10 per sq. mt. for categories A and B and Rs. 5 for categories C and D cities, (the upper limit being Rs. 2 lakhs). For the above purpose, the Government may divide the urban area into zones having regard to factors such as location, general use of land and utility of land for urban development and fix the rate for square metre of vacant land in each zone. Only 25 per cent of the compensation upto a maximum of Rs. 25,000 is payable in cash and rest is paid in negotiable bonds redeemable after the expiry of 20 years carrying 5 per cent interest. The States are empowered with the previous approval of Central Government to extend the Act to other towns of over 1 lakh population size.

The concept of pre-emption right, which has been in vogue in France and some Far Eastern countries for some period, has been introduced by the Act for the first time in this country with regard to certain categories of transfer of property. A person cannot transfer any vacant land within ceiling limit to another person without first giving notice of his intention to the competent authority and if the proposed transfer is a sale,

the authority has the option to purchase the land not at the price agreed upon but calculated as per the Land Acquisition Act. In case of a transfer of land with building, by sale, mortgage or lease for over 10 years, the transferor should not only give notice to the authority but also obtain his permission to do so and the authority has the pre-emption right to purchase the property at a mutually agreed price between the State and the applicant or in accordance with the Land Acquisition Act. Id either case, the right must be exercised within 60 days. No land transactions will be registered unless the above conditions are complied with. The Central Government has clarified that the pre-emption right would be exercised only in public interest, *e.g.*, building a Government office, or public institution, providing a school playground or house-sites for the poor and widening of the road.

Exemptions and Non-applicability of Act

The following cases are exempted from the operation of ceiling limit on vacant land (Section 19): Vacant lands held by Central and State Governments, authorities or corporations established under an Act, government company, military, naval or air force institution, any bank, cooperative society (being a land mortgage bank or a registered housing cooperative society), educational, cultural, technical or scientific institution or club (as may be approved by the Government).

The State Government have discretionary powers to give exemption from the operation of the ceiling limit to any person if it considers expedient in public interest to do so having regard to location of such land, the purpose for which it is being or proposed to be used and other relevant factors or in cases where enforcement of the ceiling limit would cause undue hardship.

The State Government can also declare that ceiling limit will not apply to approved schemes undertaken by individuals for construction of dwellings for the weaker sections of the community (plinth area of each unit not to exceed 80 sq. mts.)

Where any plot becomes vacant due to demolition of the building by the owner or due to its destruction from natural causes, and if the plot is to be redeveloped as per the Master

Plan, the State Government may permit the owner to retain the excess land, if any, over the ceiling limit.

The Ministry of Works and Housing has issued a series of guidelines with regard to operational aspects of the Act on matters like procedures for sanctioning building construction plans by local bodies on plots within and in excess of the ceiling limit, grant of exemption to industrial plots and criteria for selection of additional towns for extending the Act.

Overriding Effects of the Act

Some of the provisions of the Act, such as those relating to maximum size of plot and plinth area, may conflict with the corresponding standards contained in the building rules or zoning laws or statutory scheme or bye-laws of the municipal act. The Ceiling Act provisions will prevail in such cases as the Act has an over-riding effect (Section 42). It follows from this that even plots in subdivision layout plans, approved by the competent authorities, and plots, earlier allotted to individuals by the authorities for construction of a house or factory, are not excluded from the operation of the ceiling limit.

Emerging Issues and Vistas for Urban Development

An attempt will be made now to identify and discuss briefly the various issues which have emerged due to the ULCR Act, its likely impact on urban development, hardships caused to the public and also its policy implications for urban development.

Extent of Vacant and Agricultural Lands in Urban Areas

It would be pertinent to examine the extent of vacant lands, the size-wise distribution of individual holdings and degree of utilization of vacant land for agriculture in the urban areas since that would give a rough indication of extent of excess lands that would be available to the Government as a result of the Ceiling Act.

A serious handicap with regard to application of ULCR Act will be the lack of any systematic documentation of urban land holdings comparable to the old revenue records which were useful for imposition of a ceiling on agricultural holdings. Survey records for our urban areas are very out-dated, *e.g.*, Calcutta Survey Map was drawn up in 1910.

A study of the figures at page 184 (taken from the concerned recent Official Master Plan Reports) gives an indication of the extent of vacant lands in our cities and also reveals that a considerable proportion of the total lands within the cities is used for agriculture in most of the cities and hence will not be treated as 'vacant lands' for the purposes of the Act unless otherwise shown in the Master Plan.

Next, coming to the size of individual land holdings (see table at page 185) shows size-wise distribution of individual holding in the suburbs of 3 towns in Maharashtra (*i.e.* a metropolis, a medium-sized city and a small town).

The table at clearly shows that the proportion of large holdings is quite significant in all three cases and the number of small individual holdings are not many as some seem to expect. The large proportion of large holdings indicates that considerable excess lands will be available from our urban areas after applying the Ceiling Act, though many of them might be exempted due to agricultural use.

A recent estimate based on a sample survey revealed that 6700 hectares of excess land would be available for Bangalore city. A recent survey indicated that 3183 lakhs of sq. mts. of excess land will be available from the urban agglomeration.

Strict enforcement of the Ceiling Act on the extensive palace compounds of Maharajas situated in Mysore, Indore, Bhopal, Gwalior, Jaipur and other cities ought to yield considerable excess lands. Many of these palace compounds extend over 15 to 20 acres and have a coverage of perhaps less than 1 to 5 per cent. Attempts would obviously be made by the members of these royal families to show that considerable portion of the palace yards were used for agriculture.

When lands are taken away from large compounds of the 'living', certainly, large yards appurtenant to buildings like the Teen Murti House (dedicated to the memory of the 'dead', howsoever great when alive) ought not to be spared; but, then, the government properties are exempted under the Act.

The number of statements filed before competent authorities by parties having excess land before the last date, gives an idea of number of holdings in excess of ceiling limit, *e.g.*, Hyderabad —13,529; Lucknow—16,067; Calcutta—20,714; Greater Bombay—10,000.

AGRICULTURAL LANDS & VACANT LANDS IN SELECTED INDIAN CITIES

Name of city	*Nature of use*	*Area within Municipal Area*	*Percentage of Municipal Area*	*Area in planning Area*	*% of total planning Area*
1. Visakhapatnam	(a) Agriculture	69	0.60	—	—
	(b) Vacant lands	4,929	42	—	—
2. Bhopal	(a) Agriculture	3,323 h.a.	—	3,323	38.4
	(b) Vacant lands	565 h.a.	—	1,100	12.8
3. Indore	(a) Agriculture	6,282	45.6	6,282	43.8
	(b) Vacant lands	1,400	10.1	1,400	9.8
4. Bhubaneswar	Agriculture	—	—	1,470	14.27
5. Hyderabad	Agriculture	—	17.84	—	—
6. Vijayawada	Agriculture	2,393	32.0	8,25,64	11.00
7. Calicut	Agriculture & other uses	5,640	27.54	4,049	22.89
8. Siliguri	Agriculture & Vacant Lands	—	—	14,906	68
9. Allahabad	(a) Good Agriculture	—	—	1,40,696	48.56
	(b) Bad Agriculture	—	—	16,000	5.53
	(c) Barren Land	—	—	8,000	2.76
	(d) Orchards	—	—	10,700	3.70
	(e) Low-lying & water logged areas	—	—	32,200	11.12

SOURCE : Recent Official Master Plan Reports for selected cities.
Extents are given in acres unless otherwise specified.

DISTRIBUTION SIZE-WISE BY PERCENTAGE OF PROPERTY HOLDINGS IN THE SUBURBS OF SELECT CITIES FROM MAHARASHTRA

Name of city	*Size of Property*	*No. of Properties*	*Percentage*
I. Bombay	1. Less than 300 sq. yds.	1	0.9
(Borivali Area)	2. 301 to 600	24	22.4
(Population of Greater	3. 601 to 900	10	9.4
Bombay.	4. 901 to 1200	13	12.2
59, 68, 546)	5. 1201 to 1500	9	7.5
	6. 1501 to above	51	47.6
		107	100
II. Suburban	1. Less than 1 acre	48	25
Area of Sholapur	2. 1 acre to 3 acres	53	27.1
(Population	3. 3 acres to 6 acres	53	27.3
3,98,122)	4. 6 acres to 9 acres	16	8.5
	5. 9 acres to 12 acres	8	4.1
	6. 12 acres and above	16	8.2
		194	100.2

(Continued)

Name of City	*Size of Property*	*No. of Properties*	*Percentage*
III. Pandharpur (Population 53, 634)	1. Less than 1 acre	1	3.8
	2. 1 acre to 3 acres	3	11.1
	3. 3 acres to 6 acres	4	14.8
	4. 6 acres to 9 acres	4	14.8
	5. 9 acres to 12 acres	—	—
	6. 12 acres and above	15	55.5
		27	100

SOURCE : Town Planning and Valuation Department, Government of Maharashtra (Figures taken from an unpublished Thesis of Shri R.S. Nandimath on Urban Land Reforms, SPA, New Delhi, 1974).

End of an Era of Substandard Colonization by Speculators

The basic philosophy underlying land subdivision control is that the coloniser should not only designate land for streets, parks and other community facilities as per the approved layout plan, but also bear the responsibility for forming the streets and developing the community facilities. The local body should be responsible for their maintenance only. The municipal Act often requires that the streets should be 'levelled, paved, metalled, flagged, channelled, sewered, drained and lighted' to the satisfaction of the municipal council.

However, due to the hankering after huge profits by the speculators and slackness in enforcement of these laws, landlords sell the developed or undeveloped plots without fulfilling their legal obligations. The Registration Department is not required to verify if a layout plan was approved by the local body before registering a sale transaction. The purchasers of plots later exert political pressure on the municipal officials for taking over such substandard and, at times, unauthorised streets and declare them as public streets. The streets become a financial liability later on the municipal exchequer. This is, generally, the woeful tale of development of unauthorised and substandard colonies in the suburbs of all our cities. Of course, there have been exceptions by way of reasonably well-developed colonies by some individuals and firms.

Due to the Urban Land Ceiling Act, all these speculators and colonisers will make a glorious exit from the estate development business in the cities covered by the Act.

The question will naturally arise as to whether the urban development authorities or the like will be able to fill up the gap created by the exist of private estate developers; otherwise, there will be utter urban chaos and occurrence of squatting and slums on a large scale.

Despite all their drawbacks, the private coloniser operated quickly and efficiently. The private estate market was quite elastic in responding to the public demand for plots while the same cannot always be said to be true of land development and disposal in public sector.

Selection of Urban Agglomerations and their Grouping

All the 73 towns and cities, to which the Act has been made

applicable, belong to Class I cities (1971 Census). On a careful scrutiny, it is observed that all the cities, each having population exceeding 2 lakhs, have been brought under the operation of the Act. Evidently, on practical considerations, it was not considered desirable to extend, in one stroke, the Act to all class I cities since the State Governments may not be able to cope up suddenly with the administrative work involved. In States like Orissa and Assam which do not have any city exceeding 2 lakh population each, the largest city in the State was selected irrespective of its size. The population size, functional importance and rate of population growth appear to have been the main criteria in selection of the towns.

Ten cities having population less than 2 lakhs each have been brought under the operation of the Act, *viz.*, Ulhasnagar (1,68,454), Nasik (1,76,187), Thana (1,70,167), Sangli (1,15,052), Bikaner (1,88,598), Tirunelveli (1,08,509), Dehra Dun (1,99,443), Asansol (1,51,388), Cuttack (1,94,036) and Gauhati (1,22,981). Evidently, these cities were included on considerations of their special functional importance.

Suprising enough, some of the cities like Aurangabad (1,50,514), Akola (1,68,474), Malegaon (1,91,784) and Amravathy (1,93,636) were not included even though they are larger in size than some of the cities selected within the corresponding States.

The cities have been grouped under categories A, B, C and D mainly on consideration of their population size as shown below:

Category A—Delhi, Bombay, Calcutta and Madras
B—Cities with population exceeding 1 million
C—Cities with population 3 lakhs to 1 million
D—Cities with population 2 to 3 lakhs.

Bombay is an island with no space to expand and there are swampy low-lying lands on either side of Calcutta connurbation. Both these metropolitan areas, which are tending towards attainment of megalapolitan stage of growth, have developed with considerable compactness, density and congestion. On the other hand, Madras and Delhi have a vast hinterland into which they could expand and, relatively speaking, they have less density and congestion and are well-planned cities with several areas having garden-city character. The wisdom of

applying the same restrictions with regard to vacant land size and plinth area for the four metropolitan areas is questionable. In fact, there may be need for varying these standards as between the core, suburban and fringe areas of the same metropolis.

Villages in the periphery of large cities, *e.g.*, Mukhla, Nabagram, Chakda and Sankrail in Calcutta agglomeration have been included in categories A and B and hence ceiling limit of 500 sq. mts. will operate in these villages though the ceiling limit is higher in larger towns under categories C and D.

Since Tamil Nadu ULCR Act was enacted separately as a President's Act, persons having excess vacant land in urban agglomerations of Tamil Nadu need not take into account the vacant lands held by them in urban agglomerations outside Tamil Nadu and *vice-versa*. This anomaly needs to be sorted out through an appropriate legislative action.

The peripheral area of an urban agglomeration in a State may sometimes fall within the boundary of another State, *e.g.*, peripheral area of Delhi agglomeration falling in Haryana. In such cases the former agglomeration shall include only as much of the peripheral area as is within the boundaries of the State wherein it is located.

Shape of Excess Lands

Since the owner has the option of deciding upon the shape to dimensions of the plot to be retained by him within the ceiling limit, excess lands will be available to the Government in a discontinuous and in varying shapes (at times even in a truncated manner). It might have been more desirable from the point of view of urban development if the Act had provided for allotment of alternative plots within ceiling limits at a suitable place to these owners rather than allow them to retain such plots on their own lands.

So as to obtain an extensive continuous lands of regular shape for undertaking large-scale developments, the Government may have to acquire vacant lands, retained by the owners, and agricultural lands under the Land Acquisition Act, 1894 besides getting the excess lands under the Ceiling Act. The planners will also have to use all ingenuity for suggesting proper uses (such as shops, parking areas, spaces, etc.) for the

small truncated marginal lands that may be obtained as excess lands from plots, which are a little larger than the ceiling limit. It might be a better idea for the Government not to take excess lands (which do not exceed about 100 sq. mts.) in cases of marginal plots. If such marginal excess could not be developed as an independent unit or if there is no other contiguous land to which it could be clubbed so as to form a viable unit for development, it would not be worthwhile to acquire the same.

Hon'ble Minister for Works and Housing Mr. Raghuramiah stated recently that only viable land will be acquired but the ULCR Act does not provide any scope for discretion in this regard with the competent authority who will have to initiate acquisition proceeding in all cases of excess land and he can only adjust the time-phasing of acquisition of the lands.

A lacuna in the Act is the absence of any provision for having the excess land on each plot demarcated on the ground either by the party or the competent authority. In the absence of such demarcation, it will not be possible for the excess land to be later sold and registered in favour of an allottee.

Master Plan in Relation to Ceiling Act

The town-planners would be happy to note the significant place attached to master plan in the Ceiling Act. Agricultural lands shown for non-agricultural use in the master plan are not to be excluded from the ceiling limit. In some of the States, the master plans for urban areas carry other nomenclature, *e.g.*, Comprehensive Development Plan or General Town-Planning Scheme. But this is taken care of by the insertion of words 'by whatever name called' in Section 2(h) of the Act.

Master plans have been prepared in recent decades for most of the towns and cities in the country but in States like Punjab, Haryana and West Bengal the master plans do not yet have legal backing. However, there is no statutory requirement that the master plan should have been sanctioned under law since Section 2(h) stipulates that the master plan should have been prepared in pursuance of law or an order of the Government.

It may be noteworthy that Calcutta, the largest metropolis

in India, does not have a master plan in the sense defined in the Act but has a Basic Development Plan which provides for the development of infrastructure and civil services.

A special requirement stipulated in Section 2(h) is that the master plan should indicate the stages by which the development shall be carried out. Most of the existing master plans are deficient in this regard and the state town-planning departments should take steps to supply this omission immediately failing which the master plans would not be considered as valid one (vide AP High Court decision on Warrangal Plan, referred to earlier).

Planning officials now weild a tremendous power and a brush stroke of green colour or another colour in the master plan can make all the difference as to whether certain lands were to be excluded from the ceiling limit or not. They should resist attempts by vested interests to make changes in the land use proposals of the draft master plans, for their benefit.

Agricultural Land and Ceiling Act

Agricultural lands are excluded from the ceiling limit subject to the following conditions: (1) not being used for raising grass, dairy farming, poultry farming and breeding of livestock, (2) entered in revenue records as being used for agriculture, (3) not specified in the master plan for a non-agricultural use.

It is inevitable that the metropolitan cities and large cities will have to encroach upon agricultural lands in the course of their expansion. Of course, whenever a city would expand into an agricultural land or a non-agricultural land, the former ought to be preserved. In a vast country like ours, food production has to be increased through consolidation of land holdings, increased agricultural inputs, etc., and the stress ought not to be at preventing altogether urban expansion into agricultural areas. Thus, the Act, perhaps, ought not have granted exemption to agricultural lands from the operation of Ceiling Act. The saving clause in this regard is that the Act provides that agricultural lands are not exempt if shown for non-agricultural purpose in the master plan.

In certain States, notably Punjab and Andhra Pradesh, there are pressures exerted by the farmers' lobbies for the revision of

master plans so that bonafide agricultural lands are not adversely affected by the Act. In fact, it is reported that the Punjab Government has ordered the revision of master plans on the above lines. This is rather an unfortunate trend as it militates against one of the basic objectives of the Act, *viz.*, to secure all suitable vacant lands under public ownership so as to subserve public good.

In the fringes of our cities, there are several villages inhabited mainly by farmers whose holdings are small. The Act would cause undue hardship to them as the master plans would reserve these lands for urban uses and the compensation payable in cases where there is income from agriculture would be minimal. Displaced from their means of livelihood, these agriculturists might be left with no other alternative but to move to the cities and further aggravate the critical conditions there. Suitable rehabilitation measures might have to be worked out for these families.

In Kerala, where agriculture is widely practised within large compounds of houses, the rigorous application of the Act can result in lowering of the agricultural production.

Industry and the Ceiling Limit

The ULCR Act has created uncertainities about expansion, modernisation and diversification of existing factory sites. In Delhi, the plots held by industrialists, were allotted or purchased from the Delhi Development Authority which even after the promulgation of the Act has been offering industrial plots measuring 600 sq. mts. But according to the guidelines issued by the Central Government, land required for expansion of industry within the next five years and applications in respect of vacant lands upto ½ acre should be exempted as a matter of course. Safeguards are provided to ensure that such vacant lands are transferred and also that the expansion is completed with the specified period.

A certain degree of disposal of industries and population may be reasonably expected to take place from large cities to smaller ones due to the restrictions imposed by the Ceiling Act in view of the impossibility of obtaining large plots in large cities for large and medium-scale industries and also due to possibility of building luxurious mansions in cities and towns

of less size.

Exemptions for expansion of existing industries in urban agglomerations should be granted rather liberally. New large and medium-scale industries which have strong linkages with the large city should also be given similar exemptions.

Exemptions in Cases of Hardship

The State Government have discretionary powers to grant exemption from the operation of ceiling limit on considerations of 'public interest' and 'undue hardship'. These expressions are rather general and broad in scope and the Central Government should issue some general guidelines in this regard. It may be noted that the exemption from the ceiling limit attaches itself not to the person but to the particular vacant land in question.

A genuine case of hardship worth-mentioning is that of middle-class retired officials who may have invested all their life-time savings, provident funds and borrowed money on building a house on a plot exceeding the ceiling limit in the suburbs of a large city. Surely, the days have not passed away when man could not dream of a house with a well, a few coconut and plantain trees, kitchen garden and a garage in the peripheral areas of city.

Impact of the Act on the Estate Market

After the advent of the Ceiling Act, there has been, generally, a sharp decline in prices of vacant lands in the urban agglomerations and this is due to a variety of reasons. Firstly, the compensation payable under the Act for the excess land has no relationship with land value and is notional. Then, there is the psychological impact of a sense of insecurity due to the legislation and a tendency for potential buyers to adopt an attitude of 'wait and see'. The land transactions, which have generally come to a standstill, can be expected to pick up after a period of about one year. It is also true that, in anticipation of the legislative reform, several landlords have disposed of plots, some of these being benami transactions, which it may be difficult to detect later. For instance, there are 21,495 cases of registered land transactions in Ahmedabad during 1975 as against 16,638 in 1974.

Phenomenal decreases in land prices might often lead to a fall in house rents, and can also lead to a general deflation in the prices. However, an increase in the value and rents of existing large bungalows and spacious flats was noticeable in the urban agglomerations since there will not be any increase in their supply due to the restrictions imposed by the Act. There have also been reports of a phenomenal increase in the value of plots, lying within the ceiling limit, and this is understandable.

Building construction activity, relating to provision of new housing accommodation in the private sector, is reported to have slowed down considerably in the urban areas, covered by the Act and this may create serious unemployment problems in the short run for various personnel who depend on this activity such as contractors, architects, engineers, skilled and unskilled workers, employees of building materials, industry and furnituremakers. A recent official film admitted that two lakh construction workers in Bombay were idle. There appear to be a slight improvement in the situation after the issue of the guidelines by the Central Government regarding the grant of building permits. It must, however, be noted that the housing construction activity may not often be a major component of the building construction activity, which includes construction of factories, office buildings, etc., specially in larger cities.

In the long run, however, after the development authorities have developed the excess land and launched public housing projects or have disposed of the developed lands, the housing construction activity will not only be renewed with added vigour but expand considerably.

Impact on Density and Building Height

The Act imposes a restriction on plot size and plinth area but does not impose any restriction on the total number of dwelling units, that may be constructed on a floor or in the building, or on the vertical height or coverage of the building. In these circumstances, the development of suburban areas of larger cities will take place at higher densities than before and one might expect to see less of garden-city character in the suburbs of Madras and Delhi.

As there is no restriction on the total floor area, an increase

in heights of new buildings could be expected but since the 'Damocles sword' of 'ceiling on urban property' will keep hanging, the increase in height may not be considerable. Thus, there might be less of skyscrapers in private housing in our metropolitan areas, whereby there may not be an optimum use of land.

Bulk Acquisition of Lands and New Vistas

Most of the master plans for our towns and cities, have remained unimplemented so far on the plea of paucity of funds to enable massive acquisition of lands for development by the authorities. The excuse will no longer hold good since extensive areas of agricultural lands on the periphery of cities, whose prices have risen sharply in recent years out of all proportion to their value as agricultural land, can now be acquired under Ceiling Act by the Government for a moderate price and made available at reasonable price to public authorities for development. Whenever it is proposed to undertake large-scale corporate development, the Government may have to undertake compulsory acquisition of vacant land retained with the owners (under the Land Acquisition Act) in addition to taking possession of excess lands under the Ceiling Act.

Massive public ownership of urban vacant lands opens up new vistas in urban development. In a sense, an Indian urban revolution is under way now and could become a model for other developing countries to emulate. Planners can now indulge in utopian dreams and prepare imaginative plans for development of housing colonies, shopping centres, industrial estates, recreation areas and even new towns. One has to see the spectacular results in this regard in Delhi after the advent of Master Plan for realizing the potentialities as well as dangers in bulk land acquisition policy. Job opportunities for urban designers, planners and architects with urban development authorities are bound to increase in the near future.

It must be cautioned here that a policy of bulk acquisition of lands can also worsen an urban situation if it is improperly implemented (*e.g.*, by causing inflation of land values through auction at high prices of developed plots or due to a slow pace of land development resulting in growth of slums and squatter colonies as has happened in Delhi in recent times). In Delhi,

the preliminary notification under Sec. 4(1) of the Land Acquisition Act in respect of vacant lands was issued as far back as 1957 when the prices of lands were very low (*i.e.*, less than about Rs. 10 per sq. yd.). Delhi Administration has taken possession of 36,000 acres of land by January, 1975 and of these, 25,000 acres have passed into the hands of Delhi Development Authority, which has made available to the public 14,094 developed plots till last year. Of these, 23 per cent, 23 per cent and 12 per cent were given to high, middle and low income groups respectively.* Thus the low-income group received a small share of the developed plots though they constitute the bulk of Delhi's population. Besides, there has been a phenomenal increase in land values due to the high sale price (by auction) of the developed plots, at times exceeding Rs. 500 per sq. mt In these circumstances, it is not surprising that there were about 1,50,000 families squatting in Delhi (1975). The D D A. has itself made a huge profit of Rs. 12.23 crores out of sales of plots to high-income group during last 14 years. The goal of speculative profits, pursued by urban development authorities, should not conflict with the more laudable goals of curbing soaring land prices and ensuring availability of land to those who need it.

Allotment of Acquired Lands

The ULCR Act empowers the State Government to allot lands in excess of ceiling limit to any industry (meaning business, profession, trade, undertaking or manufacture) or for residential accommodation for the industry. There is likelihood of putting forth claims for same land by the public authorities. The existing master plans showing land use proposals would not provide sufficient guidelines for allotment of acquired lands.

The townplanning departments and the urban development authorities should take the initiative in preparing detailed plans for utilization of excess lands showing details such as whether the land is to be developed in public or private sector and in the former case, the name of the department or the public

*Howland Mary, "Delhi's Larg-Scale Land Acquisition, Development and Disposal Policy: An Appraisal", *Urban and Rural Planning Thought Journal*, January, 1975, New Delhi.

authority which should be allotted the land so that such plans could give guidance to the State Governments in the matter of allocation of excess lands. The plans should also identify areas wherein pre-emption right over transfer of property should be exercised by the Government so that these lands may be available for urban development purposes. The authority preparing such plans should obtain information from all departments and public agencies regarding their land requirements, say for next five years, for their development plans.

Priority should be given to urban development authority, municipal body and the housing board in the matter of allocation of land among public agencies. The long-term objective should be to have a separate urban land bank in every agglomeration.

The Central Government should circulate clear guidelines regarding allocation policy for acquired lands at an early date.

Housing Aspects

The housing backlog in our urban areas is enormous and is estimated at about 20 millions. Hence the availability of extensive vacant lands in the agglomerations due to the Ceiling Act would be a great boon and the Government will evidently give priority to housing in the matter of utilisation of the acquired lands. In particular, top priority would be given for construction of dwelling units for the economically weaker sections of the society.

The vacant lands, to be used by private individuals for housing the weaker sections of the community with a plinth area of each unit not exceeding 80 sq. mts., are exempted from the ceiling limit from the Act. From the guidelines, it would appear that the weaker sections would be those having income below Rs. 7,200 and limit on cost of each dwelling unit is placed at Rs. 18,000/-. Sec. 21 of the Act should be clarified or amended, if needed, so as to exempt owners of vacant lands, who intend to sell plots to weaker sections that prefer to build their houses.

A spurt in the construction of houses for lower-income groups may be expected in both public and private sectors in the near future. But there is danger of too many houses being built

for lower-income groups and several houses remaining unsold due to lack of purchasing power with them, *e.g.*, several unsold tenements at Ahmedabad built by the Housing Board recently and likewise in Bombay. Hence a careful assessment must be made of the demand for houses, the purchasing power and the requirement (*e.g.*, whether a developed plot or a tenement or a dwelling unit) of the weaker sections of the community.

Development of housing for weaker sections of the community on strips of excess lands, obtained from large vacant plots in existing posh colonies, may lead to creation of heterogeneous communities with concomitant sociological problems. The shopping and other community facilities in such areas would be beyond the reach of the weaker sections accommodated therein and there is also urban aesthetics involved here. On the other hand, the effect of the Act may also be to promote housing colonies intended solely for weaker sections and this would not be consistent with modern ideas of secularism. It is difficult to know what the correct approach would be. Perhaps, one might attempt to have a mixture of adjacent income groups in some of the new colonies.

Vacant lands for group housing schemes, sanctioned by authority before the advent of the Act, are exempted from the ceiling limit under the Act but a lacuna is that no period has been specified for completion of the group housing.

A spurt in cooperative housing activity may be expected in the urban agglomerations due to the fact that registered co-operative societies are exempted from the Act and also the possibility of enjoying a large common space in such a corporate development rather than small yards on individual plots. It must be mentioned here that there are reports of several cases of misappropriation of funds by cooperative housing societies in the southern states of the country.

Involvement of Private Sector

The bulk of housing construction in our urban areas in recent years has been by private agencies except for the housing for the weaker sections which is in need of public subsidies. For the Government to take over all surplus land and allot them only to public sector agencies would result in not mobilising private capital for housing development and thereby

decrease the rate of housing supply in the market. All the urban development authorities of the 73 agglomerations may not be as fortunate as the Delhi Development Authority in getting substantial financial assistance from the Central Government so as to enable them to undertake public housing on an adequate scale. It may be useful to allot some blocks of lands, out of the acquired surplus lands, to private individuals and firms ready to make investment on estate development subject to suitable conditions.

Funds for Land Development

The question of how the development authorities in the urban agglomerations are going to find the funds needed for the development of the acquired lands including the construction of houses, etc., remains unanswered in the Act. The urban development authorities and the housing boards should be geared for playing a dynamic role and filling up the vacuum created by the exit of private colonisers and estate developers. They should be provided with sufficient funds, which could act as a sort of a revolving fund, by the State and Central Government. It may be remembered that the D.D.A. could play a dynamic role in the development of lands in Delhi since the Central Government had given it initially a Revolving Fund of Rs. 5 crores and subsequently another Rs. 12.31 crores for meeting the cost of acquisition and development of lands and ploughing the profits obtained from sale of plots back into the Revolving Fund for enabling further developing works.

In view of the special situation created by the ULCR Act, there is a fit case for a substantial increase in allocation of funds for housing and urban development by the Central and State Governments under the Fifth Plan. A major part of the funds allocated for housing and urban development by the HUDCO and other financing agencies of Central and State Governments should be given to the development authorities operating in the urban agglomerations covered by the Ceiling Act. Unless the above measures are taken, supply of developed plots and houses will fall short of demand and there will be an utter urban chaos and growth of slums and squatting in the urban agglomerations.

The development authorities in the agglomerations should

be able to generate large internal resources through sale of plots and lands to higher-income groups at market prices. Even lands required by public agencies should not be given at nominal prices but at about market value or a little less than that. Needless to say, plots for the low-income groups may have to be sold at much less than market value.

Organisational Aspects

A serious shortcoming in the ULCR Act is that it does not contain any indication of the type of organisation needed to implement the Act. The need for an appropriate organisational structure at Central, State and Local levels for ensuring effective implementation of the Act cannot be over-emphasized.

In most of the States, officials belonging to the administrative cadres in the Revenue Department like the deputy commissioners or subdivisional officers have been declared as competent authorities for the agglomeration. In States like Maharashtra and Gujarat, where the officers of the town planning department have considerable experience in valuation and land acquisition, these officers could have been declared as competent authorities. In some of the States, town planning departments have deputed their officers to assist the competent authorities in their work.

There is a High-Level Central Co-ordination Committee consisting of Secretaries of concerned Central Ministries and Secretaries in charge of Ceiling Act of concerned States and others to review periodically the progress made in implementation of the Act and suggest measures for monitoring the progress. Likewise, high-level coordination committees were appointed in most of the States where the Act is in operation.

Necessary administrative machinery will need to be created at the local level for dealing with the following matters connected with the implementation of the Act:

1. Formulation of plans and policies for use of acquired lands.
2. Development of acquired lands and construction of structures thereon.
3. Allotment of lands or houses to authorities or private individuals
4. Grant of exemptions from the ceiling limits.

5. Regulations of transfers of urban property and exercise of pre-emption right.

Some of the urban agglomerations covered by the Act do not have urban development authorities and the concerned State Government should take steps immediately to set up development authorities for such urban areas. The urban development authorities should set up cells for managing the acquired lands vested with the authority.

Committees consisting of local officials have been set up for each urban agglomeration by several States for making recommendations for exercise of pre-emption right and utilisation of excess lands. In some of the States, grant of exemptions are decided by either the cabinet (*e.g.*, U.P.) or the concerned Minister (*e.g.*, Rajasthan) after obtaining the reports from the concerned departments. It may be difficult for a Minister or Cabinet to examine merits of every application for exemption and such a high-level body ought to frame the policy for grant of exemption and the implementation of the policy should be left to a local committee or official. Rajasthan State has taken a wise lead in setting up a separate directorate for dealing with urban ceiling matters.

The Act may let loose a flood of corruption at all levels of administration connected with enforcement of the Act. This may range from getting the revenue records or the master plan changed so as to show agricultural use for a particular land for getting from the ceiling limit, or preventing exercise of pre-emption right in any case or getting exemption from the ceiling limit on grounds of public interest or undue hardship.

Conclusion

The Central Government had suggested to States following legislative measures, complementary to the Ceiling Act: (1) tax on vacant land, (2) tax on built-up plots in excess of ceiling, (3) tax on built-up areas in excess of maximum plinth areas, now specified, (4) a development charge when land is developed, (5) a charge for change in land use, (6) restriction on transfer of agricultural land within urban agglomerations. (7) change in municipal building bye-laws to make them conform to ULCR Act. All these legislative measures, if enacted will break the back of the landlord and, fortunately, the States have been

rather tardy in taking action on these measures. West Bengal and Tamil Nadu have enacted the urban land tax Acts.

The Ceiling Act appears to have been based on a political ideology rather than veered towards achieving an orderly urban development. But it can be made a useful tool for attaining goals of urban development. The Act will require several amendments and be supplemented by several more guidelines.

As stated earlier, the Act has met with vehemet criticism from several quarters. There is ambiguity and obscurity in several provisions of the Act. The excess lands obtained under the Act may be discontinuous and truncated. Some critics have expressed the view that the objectives of the Act can be attained in a less drastic manner by adjusting the wealth tax and by imposing a graded tax on larger urban holdings.

It would be wise for the Government to withdraw the ULCR Act and promulgate an ordinance socialising, *i.e.*, taking under public ownership all vacant lands outside the built-up areas in the urban agglomerations and providing for payment of compensation on a graded basis (that for smaller plots being near the market value and that for larger plots being a notional amount or a fraction of the market value). Such a measure would save not only a lot of botheration to the Central and State Governments and the public but also lead to better results in urban development.

IMPACT OF THE URBAN LAND (CEILING & REGULATION) ACT, 1976, ON HOUSING— NEED FOR STUDY*

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The Urban Land (Ceiling and Regulation) Act, 1976 was enacted by the Parliament in February, 1976, with the objective of socialisation of urban and urbanisable land.

The main objectives of this Act are: (*i*) the imposition of a ceiling on vacant land in urban agglomerations; (*ii*) the acquisition of such land in excess of the ceiling limit; and (*iii*) to regulate the construction of buildings on such land and for matters connected therewith with a view to preventing concentration of urban land in the hands of a few persons and speculation and profiteering therein and bringing about an equitable distribution of land in urban agglomerations to subserve the common good. Therefore, the usefulness of this Act will be judged mainly by assessing to what extent the common good has been subserved.

The Urban Land (Ceiling and Regulation) Act incorporates within itself three main features, namely,

(*i*) Imposition of ceiling on the holding of vacant land held by a person (an individual, a family, a firm, a company or a body or association of individuals)

(*ii*) Imposition of ceiling on the plinth area of dwelling units to be constructed in future.

(*iii*) Regulation of transfer of urban property.

The Act divides the urban agglomerations into four broad categories and fixes ceiling limits varying from 500 sq. meters in category 'A' to 2,000 sq. meters in category 'D' thereof. The Act also fixes a ceiling limit on the plinth area of dwelling units

*The views expressed in this paper are those of the author in his personal capacity and do not necessarily reflect the views of the Ministry to which he happens to be attached.

to be constructed in future at 300 sq. meters in categories 'A' and 'B' urban agglomerations and 500 sq. meters in categories 'C' and 'D' urban agglomerations.

The Act contains provisions (see extracts enclosed) for using it for the purposes of housing.

Section 4(3) of the Act enables a person to hold vacant land in excess of the ceiling limit for the purpose of group housing if any scheme for group housing has been sanctioned by an authority competent in this behalf immediately before the commencement of the Act.

Section 19(1) (v) of the Act exempts a housing cooperative society registered or deemed to be registered under any law relating to cooperative societies for the time being in force from the provisions of this law relating to the ceiling limit (that is, such societies can hold any vacant land beyond the ceiling limit).

Section 20(1) of the Act empowers the State Government to permit a person to hold vacant land in excess of the ceiling limit if it is satisfied that having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, subject to such conditions as may be specified by it.

Section 21 of the Act empowers the competent authority to permit a person to hold vacant land in excess of the ceiling limit for the purpose of construction of dwelling units (each such dwelling unit having a plinth area not exceeding 80 sq. meters) for the accommodation of the weaker sections of the society subject to such terms and conditions as may be prescribed by the Central Government.

Section 22 of the Act empowers the competent authority to permit the holding of the land obtained after demolition of existing building for utilising it for redevelopment in accordance with the Master Plan.

Section 23 of the Act empowers the State Government to dispose of the vacant land that may vest with it under the Act.

Sub-section (4) of section 23 specifically provides that the State Government shall dispose of the excess land to subserve the common good on such terms and conditions as the State Government may deem fit to impose.

It will be seen that the above mentioned provisions in the Act are intended to encourage housing.

Increasing the stock of houses is, no doubt, for subserving the common good. Therefore, the success of the Urban Land Ceiling Act will be evaluated by assessing whether it has contributed to increase the existing housing stock and it mainly depends on a proper and practical application of the provisions referred to above. A proper application of the provisions of the Act will imply that the pattern of orderly urban development, land uses prescribed in the master plan, environmental balances, etc., should not be ignored. A practical application of the provisions of the ceiling law will imply that conditions should be created with a view to enabling any one desirous of utilising these provisions, and these include steps such as the modification of building regulations, making available finances through banks and financial institutions, and making available building materials in a regular flow, making available the skilled and unskilled labour for construction, etc.

The housing needs in our towns and cities are enormous. It is well known that there is an acute housing shortage in the country. According to the present projection of the population trend, India is to have a population of 945 millions in 2001 AD—667 millions in rural areas and 278 millions in urban areas. The number of house-holds is expected to increase from 103 millions to 169 millions from 1974 to 2001 AD.

The present housing shortage (based on the preliminary data of the census of 1971 and the increase in house-holds due to the natural growth of population and net addition to housing stock during 1971-74) on the eve of the Fifth plan was estimated to be 15.6 millions units—3.8 million units in the urban areas and 11.8 million units in the rural areas. This shortage is estimated to increase to 65.6 millions in 2001 AD. The acute housing shortage in the country is aggravating rapidly as the years roll by because the estimated rate of house construction in the country is around two dwellings per 1000 population per annum as against 10 per 1000 population recommended by the United Nations to wipe out the shortage.

At an estimated cost of Rs. 10,000 per house in urban areas and Rs. 4,000 per house in rural areas, an investment of the order of Rs. 8,520 crores would be needed to wipe out the

present housing shortage in the country. This would be the first phase of the programme. There would be an additional requirement of funds to provide for natural growth in population and replacement of unserviceable houses. Besides, later on, as a result of the economic growth, the standard of housing will rise considerably and then the requirement of investment in this field would be colossal.

The low rate of house construction in the country is attributable to several reasons. The first and foremost is the financial inability of a large number of families to muster enough funds from their own resources for building even a modest house. These families are, therefore, badly in need of help for housing either by the affluent sections of the society or by the State itself. Private investment is profit-oriented and tends to flow into areas where the return on investment is relatively high. With the enactment of Urban Land (Ceiling and Regulation) Act, 1976, excess lands might become available in urban areas. A major portion of the excess land available should be utilised for housing and to ease the shortage of urban housing.

Housing has not been getting a priority in the National Development Programme. The allocation of finance for housing in the previous plans has been considerably low. The table on page 207 shows that the investment under housing in the public and private sectors declined in relation to total investment from one plan to the other.

The possibility of finding resources to undertake investment on a mass scale has been explored from time to time, but it has not been possible to mobilise sufficient funds for investment in the field of housing to ease the situation.

From the foregoing, it will be seen that even though the shortage of housing is acute, it has not been possible for the Government to solve it entirely; nor will it be possible to solve it entirely in the near future; that even in the existing housing stock, the contribution made by the private agencies has been very significant. It is no doubt true that the Government has been tackling the problem of housing to a very limited extent mainly through Housing Boards in the recent past. Not all measures for this have been either studied or exhausted. The climate for this has been vitiated already by State assuming the role of the provider of houses instead of motivating them to build on their

Plan	*Total amount of investment in the plans*			*Investment in housing*			*Percentage of investment in housing w.r.t. total plan investment*		
							(Rupee in crores)		
	Public	Private	Total	Public	Private	Total	Public	Private	Total
1st	1560	1800	3360	250	900	1150	16	50	34
2nd	3650	3100	6750	300	1000	1300	8	32	19
3rd	6100	4300	10400	425	1125	1550	7	26	15
4th	13655	8980	22635	625	2175	2800	5	24	12
5th	31400	16161	47561	1044	3636	4680	3	22	10

own. Site and services programme partially meets the situation. This leads to the inevitable conclusion that unless the private sector is associated and encouraged to invest in housing it may not be possible at all for the Government to solve the housing shortage at any reasonable level in the near future, because the Government do not have adequate financial resources. Another compelling factor is that housing should be undertaken energetically in an organised manner and immediately. If it is not done so, the costs and consequently rents are bound to go up. It is in these circumstances that the opportunity provided by the enactment of the Urban Land (Ceiling and Regulation) Act, 1976, and the provisions contained therein should be made use of fully.

The question will arise as to what extent the existing provisions will enable the private persons who are holding vacant lands in excess of the ceiling limit to undertake housing immediately. It will be seen that only persons who hold vacant land in excess of the ceiling limit and who have got schemes for group housing on such land sanctioned before the commencement of the Act can hold the excess land for the purpose of group housing. In cases not covered by the provision, the holder of the land is either required to get his excess vacant land exempted under section 20 of the Act or wait till all the excess vacant land is vested with the Government and the Government allots to him land for group housing. All this means considerable delay. A question may perhaps be asked why a provision may not be made in the Act to enable persons who hold vacant land in excess of the ceiling limit to utilise it for group housing to be undertaken in future, more or less, on the lines provided in section 21 of the Act if the intention is that persons holding vacant land in excess of the ceiling limit should straightway come forward to utilise it for construction of housing for low income and middle income group investing their own funds. This is perhaps not desirable because one cannot assume that all persons who have excess vacant land have the necessary business tact and knowledge and finances to come forward and undertake group housing.

It is true that one will come forward unless some incentive for construction of houses is provided. In this connection, some

relevant factors to be decided are:

(*a*) Is the existing definiton of "group housing" flexible enough? According to Explanation under sub-section (3) of section 4 of the Act:

(*i*) "group housing" means a building constructed or to be constructed with one or more floors, each floor consisting of one or more dwelling units and having common service facilities;

(*ii*) "common service facility" includes facility like staircase, balcony and verandah."

Is it desirable to make the definition variable to suit local variations? Should it be multi-storeyed or single storeyed? Should not the impact of group housing on the environment be taken into consideration? Will this result in congestion?

(*b*) Whether the cost of the land should be equal to the amount that will be paid for by the Government if it is acquired and vested in the Government or whether the cost of the land should be the market value?

(*c*) In order to ensure that the person concerned puts the excess vacant land to immediate use and complete the construction early, what time limit for completing the construction will have to be prescribed?

(*d*) The person investing his own money should get adequate return for it. It may not be enough if he gets a profit equal to the interest that he may receive from the bank if his money is kept there and it should be somewhat more than this.

(*e*) Relief from Income Tax, if he invests his own money in the construction, at least for the period of construction, should be given.

(*f*) What should be the role of Government? Too much interference by the Government may perhaps affect the initiative of the private persons. The role of the Government may be limited to the following:

(*i*) To prescribe the period within which the building should be completed. This time-factor is dependent on the availability of financial resources, building materials, quick approval of plans, provision of municipal water and electrical services, etc.

(*ii*) To prescribe the maximum ceiling cost of dwelling

unit on the basis of floor space with a view to avoid luxury housing. What is meant by luxury housing is to be clarified. Is it in terms of floor space or cost or quality of materials used? What is to be kept in view is that the house should be levyable by persons of limited means in the salaried income either outright or on hire-purchase basis and should have a life of at least 30 years. Expensive building materials and appurtenances which will increase the cost of the building should not be used.

(*iii*) To ensure that the plinth area of the dwelling unit does not exceed the ceiling limit provided in the Act.

(*iv*) To ensure that the houses are allotted to persons falling within the prescribed income groups.

(*g*) The existing building regulations should be amended suitably to encourage group housing without affecting orderly urban development.

It is felt that if the provisions of the Act are availed of for increasing the housing stock, as suggested above, the advantages are the following:

(*a*) This will enable us to generate private enthusiasm for investment in housing.

(*b*) Immediate undertaking of housing will result in costs not going up and utilization of the building materials reported to be available in plenty at present and prevent their accumulation.

(*c*) A separate organised industry of housing will develop giving employment to thousands of persons—skilled and unskilled. The migration of skilled workers to other countries for employment may be prevented.

(*d*) Competition among private persons will result in better and cheaper designs of houses.

(*e*) The experience will enable Government to formulate a public policy for alloting surplus land that will vest with the Government due to the implementation of the Act for housing.

To sum up, we may conclude that:

(*i*) The existing provisions of the Urban Land (Ceiling and

Regulation) Act should be utilised fully for encouragement of housing by the private persons who hold vacant land in excess of the ceiling limit;

(*ii*) To encourage private persons to invest their financial resources in housing, suitable incentives should be provided to them.

From the foregoing, we have seen that the Urban Land (Ceiling and Regulation) Act is bound to have a real impact on housing provided that the existing provisions in it are applied flexibly and imaginatively without sacrificing the objective of orderly urban development. There should be motivation among the persons who hold vacant land in excess of the ceiling limit for utilising it for group housing. This motivation may include as already stated: (*i*) adequate financial return on the investment made; (*ii*) availability of a regular supply of essential building materials at points of construction (establishment of supply depots for building materials at concessional rates for bulk supply by Government transport facilities, etc, will promote construction activity); (*iii*) provision of consultancy services by providing standardised designs, estimates of cost of construction, etc. (a person may be interested in undertaking group housing, but he may not be having the required knowledge and experience for this. The consultancy service should enable him to acquire this knowledge). All these point out to the need for further study in depth with a view to utilising the provisions of the Urban Land Ceiling Act for promotion of group housing.

THE LAW FOR URBAN LAND

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The Total urban land in India today is 43,606.7 sq. kms. and comprises only 1.3 per cent of the total land in the country. This 1.3 per cent urban land houses about 120 million people, *i.e.*, more than 20 per cent of the population today. This is clearly indicative of the intense pressure on urban land and as the pace of urbanization increases, the problem of land will get further accentuated. Therefore, this scarce resource needs to be put to the most effective uses. This problem is a very complex and complicated one because of the multi-competitive uses for which land can be parcelled out. In order to achieve the optimum use of land for the maximisation of benefit both to the individual and the community at large necessary and adequate administrative, fiscal and legal instruments for land utilization and management are needed. Such instruments would have to be devised within the framework of a national urban land policy, which spell out fully the objectives and goals of urban land utilisation and management.

Presently there are a number of laws governing acquisition, development and control of urban land, namely, the Land Acquisition Act, 1894, the Slum Clearance Acts, the Municipal and Improvement Trust Acts, Town Planning and Development Acts, Urban Land Ceiling Act, etc., Laws are enacted both at the Central and State levels and with different purposes in view. On account of this it has been seen that often these laws are not consonant in their objectives and generate conflicts with one another and these conflicts result in slowing down if not defeating the achievement of the broad objectives. For example, the Land Acquisition Act, 1894, is one of the oldest Acts governing the acquisition of land. It is applicable to certain lands whereas on the other hand, the Urban Land Ceiling Act is confined to 'vacant lands' only. The lands which will have to

be acquired, other than the vacant lands defined in the Act will have to be bought at a price under the Land Acquisition Act and not the stipulated price of Rs. 10 in A and B class of towns or Rs. 5 in C and D class of towns. This results in two sets of prevailing prices which can be substantially different.

Besides, the Zoning Regulations do not provide a limit on the size of urban holding whereas the Urban Land Ceiling Law implies, for example that an urban holding should normally not be over 300 sq. metres of plinth area and 500 sq. metres for the enjoyment of the area in A class cities. Also the restrictions on the open area for enjoyment of the building may be more than that prescribed.

The concept of freehold land gives the owner the latitude to enter into speculative transactions and it has been found difficult to regulate. This could be counteracted by bringing in the concept of leasehold land wherein the authorities have the legal right to enforce predetermined conditions. Such conflicts have to be reconciled.

A consolidated Act covering all the vital aspects of urban land appears to be the answer. The aspects to be considered while framing such a legislation could be listed as follows:

1. Land as a property for inheritance and transfer.
2. Land as a place for living.
3. Land as a factor in economic production and in provision of services.
4. Land as a place for social interaction.
5. Land as an instrument for healthy development, speculation and financing.
6. Land as an ecological element.
7. Land as an entity for historical preservation and conservation.
8. Land as a resource for recreation.

The right of ownership is an inherent part of our economic, social and political order. The Indian Constitution guarantees to its people the "right to acquire, hold and dispose of property", although this is not an unlimited freedom. However, an individual in the normal course can freely purchase or gain by inheritance property as he likes. The right of transfer has serious implications from the point of the larger social interests. This right of ownership often stands in the way of urban

development and property in urban areas being a very valuable resource has to be well controlled. An effective policy of public control over land through large-scale aquisition is necessary. Besides getting direct control on property, control can also be exercised through complete discouragement of freehold land in urban areas and encouragement of leasehold land transactions and limitations on the size of plots for various uses. Thus to this extent the individual right to property gets curtailed.

All these aspects of control on property can be taken care of in the consolidated Act. Not only this but the Act should also provide for speeding up the acquisition procedure and for advance procurement of land, so that a Reserve Bank of land would always be available. The Act should provide for acquisition of land under rolling programmes for a period of five years. It is not enough to acquire land but to put it to proper use to avoid delay and deterioration.

Land is a place for living, working and enjoyment. But what is most essential is healthy and liveable environment and this can be achieved through proper land use planning. It is the principal tool for securing spatial development. The consolidated Act must cater to this aspect as well. At present, in a large number of urban areas urban facilities have been strained. There is an inequitable Man-Land ratio. The acute shortages in housing have created heavy demands for residential land. This has resulted in blight, development of slums, congestion and over-crowding. This is a painful waste of valuable land. The objective should be to correct this imbalance. The Act should provide for the preparation of comprehensive development plans so as to discourage urban land lying idle and provide for a systematic redevelopment of deteriorated urban areas.

One of the objects of urban land planning is the provision of areas for recreation and leisure and the preservation and enhancement of the pleasant features of the town and the adjoining countryside. This can also be achieved through control of development and the provision for preservation of such areas. The consolidated Act should provide for it. These are areas of 'special control'. They are not only to be preserved for their beauty but are areas which are going to provide the open space for recreation by their basic character. Green belts

are also to be provided for this will prevent the outward spread of towns as well as provide recreation areas. Playgrounds and neighbourhood parks and open spaces encroach upon urban land but all these areas make a contribution to improving environmental quality and fill an important social need.

Zoning regulations and sub-division regulations must be adopted as part of the legal instrument and it should be provided that Municipal bye-laws must conform to the zoning regulations. The zoning regulations are useful instruments of urban land policy.

Development planning should not only be confined to the city limits but sometimes, beyond the city limits, there lies rural land which is likely to be encroached upon with the mounting pressure on urban land. These lands are vulnerable to haphazard growth. Development on these lands should be controlled so that it is regulated. The consolidated Act should also provide for declaration of a periphery controlled area and the uses to which it can be put.

Ribbon development on high ways should also be controlled and planning should not be merely confined to the urban area and the urbanisable limits but should cover larger ground and be planned at a regional level. All this can be taken care of by the consolidated legislation. An appropriate authority must be established to control and regulate land at all levels be at local or regional level.

Land use planning even when it is centred around an urban area should have a larger regional perspective because each urban area has its economic, social and political linkages. Scientific planning must keep this in mind and a well planned out legislation will have to provide for regional planning concept and the establishment of well planned out new regional centres.

Urban land is a money spinner and there is a tendency to speculate on it and accumulate huge amounts. The land values rise because of the production potential which has been created through the process of development by the government agencies. There is no reason why the huge profits that accrue should be concentrated in a few hands. This unearned income should be mopped up and put to the benefit of the weaker sections. This can be done through the provision of a development charge to

be levied in the consolidated Act. This charge is a payment when land use is initiated or changed or when development is carried out. The proceeds should be utilised for further development and especially for the weaker sections.

Another method of controlling speculative activity on land is to impose ceiling on urban land holdings and time limits prescribed for keeping valuable land idle. All these aspects should be built into consolidated piece of legislation.

One of the objectives of the all-embracive legislation is the preservation of urban areas of architectural and historic interest for property. This legislation could provide for the identification of all such areas/buildings so as to give guidance to the local planning authority in performance of their functions under this Act, to prevent demolition and give special consideration for planning permission around such historical areas. It should be considered an offence to excute any changes without consultation for alteration or extension so as not to alter the character. Areas of historical interest are attractive to tourist and can achieve a balance between preservation and development and at the same time bring the economic gains of tourism to an urban areas.

An exclusive Urban Land Act covering all the aspects discussed above would have an outline illustrated below:

Urban Land Act, 197 ..

Central Act

The Urban Land Act will be a Central Act as urbanisation does not respect State boundaries. The impact of the growth of any urban area has its repercussion on other states in the country. Even the shift of centres of economic activities such as manufacturing have their influence beyond the State boundaries.

Preamble An Act to provide for the use and development of urban land, private and public ownership, preservation, protection and conservation of urban land and for matters ancillary thereto.

Be it enacted by Parliament in the....year of the

Republic of India as follows:

Chapter I *Title Scope and Extent*

Title — This Act may be cited as the Urban Land Act 197....

Scope — The scope of the urban land Act 197.. will cover ownership of urban land, comprehensive regional and local planning, its enforcement and implementation, preservation, protection and the conservation of urban land.

Extent — It will extend to the States and Union Territories of India.

Chapter II *Definitions*

This chapter will include all relevant definitions for the purposes of this Act.

Chapter III *Private Ownership and Transfer of Urban Land*

This chapter will deal with the constitution, rights, limitations and control of government on private ownership of urban land.

Chapter IV *Public Ownership of Urban Land*

This chapter will deal with identification of land needed for public purposes and relevant procedures for holding land for development. Land acquisition and management schemes and related rolling programmes, their phasing land policy statements (to be prepared by concerned Authority to form the basis of the rolling programmes of operation. Under this scheme these will provide the policy links with planning objectives) and provisions for critical emergencies.

Chapter V *Use and Development of Urban Land*

This chapter will deal with prescription of the use of urban land and its development by the preparation of comprehensive regional plans, metropolitan plans, development plans, action area plans, development schemes after the preparation of the necessary existing urban land

use maps by the authorities constituted under this Act for Planning and Development.

Chapter VI *Preservation, Protection and Conservation of Urban Land*

This chapter will provide for the preservation and protection and conservation of areas of historic and architectural interest. Such areas would have to be designated as special areas. (This would help the planning authorities greatly in performance of their function). Special consideration for grant of planning permission in and around such areas of historical importance will have to be made so that no alteration, extention takes place which will alter the special features and character.

Chapter VII *Quality of Urban Land—Degradation and Restoration*

This chapter will lay down provisions for the enforcement of repairs, improvements and the maintenance of buildings and land around it in order to prevent dilapidation. It also seeks the restoration or conservation of urban design and of the environment of the development areas and planning and development of future urban design and of environment so as to enhance the quality of urban land.

Chapter VIII *Central Urban Land Authority*

An authority to be known as the Central Urban Land Authority will be constituted for the purposes of this Act. It will guide, advice, assess and assign at the national level all policies and frame programme for ownership, development, administration and management of urban land. All other provisions pertaining to function and powers, staff meetings, etc., will be dealt with here.

Chapter IX *Finance*

The Central Urban Land Authority constituted under this Act shall have and maintain its own Fund for carrying out the purposes of this Act along with the provisions for audit, etc.

Chapter X *Miscellaneous*

This chapter will cover all miscellaneous and supplemental provisions which are needed for this purpose such as issue of notices, penalities, offences, power to frame rules, regulations, provisions regarding development charges, etc.

COUNTERACTION, INTERDEPENDENCE AND OVERLAPPINGS OF THE EXISTING LEGISLATION ON URBAN LAND

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Bentham once said that law (on any subject) should be prepared in a style intelligible to the commonest understanding, in order that everyone might consult and find the law of which he stood in need in the least possible time.[1] The law on urban land in India, however, tends to defy the above statement of Bentham. The existing legislations on the subject are so numerous and complicated that it has become extremely difficult for any one without special training to discover and understand the law that governs urban land. There is a variety of legislations dealing with a variety of problems having some bearing or the other on urban land. Thus, we have the Land Acquisition law for the purpose of acquiring lands for a public purpose, the Town Planning Legislations and Improvement Trust Acts to control the use of land and to regulate its development with a view to prevent the haphazard urban growth, the municipal enactments which contain many provisions for controlling the development of land, building activity, etc; the Slum Areas (Improvement and Clearance) Acts for the improvement and clearance of slum areas in order to prevent congestion on land and to promote hygienic conditions, the Urban Land Ceiling Legislations to prevent the concentration of urban land in the hands of a few persons and speculation and profiteering in urban land and to bring about socialization of urban land in urban agglomerations, the Urban Art Commission Act which aims at preserving, developing and maintaining the aesthetic quality of urban and

[1]Cited by Leslie Scarman, Chairman of the Law Commission for England and Wales in the Lindsey Memorial Lectures on Law Reform (the New Pattern), delivered at the University of Kelle, in November, 1976.

environmental design, etc. In addition to these legislations there are laws for the limited purpose of controlling land uses which are not, strictly speaking, land legislations, but only methods of negative control without any regular machinery.[2] The point that is intended to be brought home is that one has to search through the voluminous statute book in order to ascertain what the law is on urban land. Not only that. Some of these legislations have overriding effect on other laws while many of them are interdependent. They have overlapping provisions too. The attempt in this paper is to analyse the provisions of some of the existing legislations relating to urban land and to highlight their counteracting effects, interdependence and overlappings. The study, however, is confined to the legislations which are in force in the union territory of Delhi.

Part I of the paper will briefly explain the relevant provisions in the different legislations having a bearing on urban land and Part II of the paper will discuss the counteracting effects of these legislations and their interdependence and overlappings.

Part I

The Delhi Münicipal Corporation Act, 1957

All municipal Acts in India contain provisions that enable the local bodies to exercise control over the development of land and entrust them with powers to acquire land for undertaking development activities, approval of layout plans, regulation of building activity, demolition of dangerous buildings,' and unauthorised constructions, removal of congested buildings, prohibition of nuisances, etc. Under the Delhi Municipal Corporation Act, 1957, for instance, the Corporation has the power to acquire land either by agreement or through the provisions of the Land Acquisition Act, 1894.[3] There are provisions in the Act enjoining the owners of land to submit lay-out plans to the Commissioner of the Corporation for sanction, before utilizing,

[2]Cf. The U.P. Regulation of Building Operations Act, the Bihar Restriction of Uses of Land Act, the Madhya Pradesh Town Periphery Control Act.

[3]Sections 197-199.

selling or dealing with such lands.[4] Here, the Standing Committee is empowered to refuse sanction if the layout plan would conflict with any arrangement "*for carrying out any general scheme of development of Delhi whether contained in the master plan or a zonal development plan prepared for Delhi or not.*"[5] (emphasis added).

Regarding the erection of buildings, the Corporation has wide powers under the Act and the bye-laws made thereunder. The Act provides for the previous sanction of the Commissioner for the erection or commencement of the erection of certain works.[6] It is mandatory under the Act for any person intending to erect a building to apply to the Commissioner for sanction.[7] Similar sanction is required for making any addition, alteration or repair to a building.[8] Thus, the Corporation has control not only in cases of erection of new buildings or new part of a building but also in cases where a building is sought to be re-erected or a material alteration is made.

Under Section 336 of the Act, the Commissioner has to give sanction for the erection of a building or the execution of work unless such building or work would contravene any of the provisions of sub-section (2) of Section 336 or Section 340. One of the grounds for refusing such sanction is that the building or work or the use of the site for the building or work or any of the particulars comprised in the site plan, ground plan elevation, section or specification would contravene the provisions of any bye-law made in this behalf *or of any other law or rule, bye-law or order made under such other law*[9] (emphasis added). The proviso to Section 337 further provides that "if it appears to the Commissioner that the site of the proposed building or work is likely to be affected *by any scheme of acquisition of land for any public purpose or by any proposed regular line of a public street or extension, improvement, widening or alteration of any street*, the Commissioner may withhold sanction of the building or work ....."[10] (emphasis added). Again, sub-section (2) of

[4]Section 313.
[5]Section 313 (4)(a).
[6]Section 332.
[7]Section 333.
[8]Section 334.
[9]Section 336(2).
[10]Section 337.

Section 340 empowers the Commissioner to refuse sanction for the erection of any building on either side of a new street "if such building or any portion thereof or such work is in contravention of any building or *any other scheme or plan prepared under this Act or any other law for the time being in force*" (emphasis added).

The Act empowers the Commissioner to make orders directing the demolition of buildings "where the erection of any building or execution of any work has been commenced or is being carried on or has been completed without or contrary to the sanction referred to in Section 336 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any of the provisions of the Act or bye-laws made thereunder".[11] The Commissioner has power to stop the erection of any building or execution of any work forthwith under similar circumstances where such erection or execution is not completed.[12]

Section 347 of the Act deals with the restriction on user of land and buildings. Under this section any change in the use of any land or building without the written permission of the Commissioner is prohibited.

In addition to the above, the Commissioner has powers to demolish dangerous buildings,[13] to remove congested buildings,[14] to require improvement of buildings unfit for human habitation or to undertake the work if the same is not complied with by the owner,[15] to demolish buildings unfit for human habitation or to undertake the work if the same is not complied with by the owner,[16] to require the removal or alteration or improvement of insanitary huts and sheds,[17] to frame improvement schemes[18], etc. The Act empowers the Corporation to prepare an improvement scheme in respect of any area for the re-arrangement and

[11]Section 343.
[12]Section 344.
[13]Section 348.
[14]Section 365.
[15]Sections 366-367.
[16]Section 368.
[17]Section 369.
[18]Sections 425-429,

reconstruction of the streets and buildings.

The improvement scheme may provide for any of the following matters.[19]

(*a*) the acquisition by agreement or under the Land Acquisition Act, 1894 of any property necessary for or affected by the execution of the scheme;
(*b*) the re-laying out of any land comprised in the scheme,
(*c*) the re-distribution of sites belonging to owners of property comprised in the scheme;
(*d*) the closure or demolition of buildings or portions of buildings unfit for human habitation;
(*e*) the demolition of obstructive buildings or their portions;
(*f*) the construction or reconstruction of buildings;
(*g*) the construction or alteration of streets;
(*h*) the water supply, street lighting, drainage and other conveniences;
(*i*) provision of open spaces for the benefit of any area; the sanitary arrangements; accommodation for any class of inhabitants and the provisions of facilities for communication.

The Commissioner is required to submit every improvement scheme to the Corporation for approval and to the Central Government for sanction.[20] The Act also provides that the Commissioner while framing an improvement scheme may also frame a re-housing scheme for providing accommodation for the persons who are likely to be displaced by the execution of the improvement scheme.[21] The improvement scheme and the re-housing scheme are required to comply with the provisions of *the master plan or the zonal development plan prepared in accordance with law*[22] (emphasis added).

The Delhi Development Act, 1957

The Delhi Development Act was enacted in 1957 with the object of providing "for the development of Delhi according to plan and for matters ancillary thereto." The Act provides for the constitution of an authority called the Delhi Development

[19]Section 426.
[20]Section 427.
[21]Section 428.
[22]Section 429.

Authority[23] and an Advisory Council[24] for the purpose of advising the Authority on the preparation of the master plan and the zonal development plans and on the planning and development of Delhi and on such other matters in connection with the administration of the Act.

The Act provides that the object of the Authority "shall be to promote and secure the development of Delhi according to plan" and clothes the Authority with the various powers mentioned therein.[25]

Under the Act, the Authority is enjoined to prepare a master plan for Delhi and a zonal development plan for each of the zones into which Delhi may be divided for the purpose of development and to indicate the manner in which the land in each zone is proposed to be used and the stages by which any such development is to be carried out.[26]

The Central Government is empowered to declare any area in Delhi as a "development area" for the purpose of the Act, after referring the proposal for such declaration to the Authority and the *Municipal Corporation of Delhi for expressing their views.*[27] The Act specifically prohibits the Authority to undertake or carryout any development of land in any area which is not a development area.[28] It further provides that after the commencement of the Act, development of land in a development area is to be undertaken or carried out only after obtaining a written permission from the Authority for such development. In the case of development of land in an area other than a development area, *sanction has to be obtained in writing from the local authority concerned for such development.*[29] It further provides that after the coming into operation of any of the plans in any area, no development is to be undertaken or

[23]Section 3
[24]Section 5
[25]Section 6
[26]Section 7
[27]Section 12 (1)
[28]Section 12(2). However section 22-A empowers the Authority, if it is of opinion that it is expedient to do so to undertake the development of land which has been transferred to it or placed at its disposal under section 15 or section 22 even if such land is situated in an area which is not a development area.
[29]Section 12(3)

carried out in that area unless such development is also in accordance with such plans.[30]

Section 14 of the act provides that after the coming into operation of any of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan.

The Act provides for the acquisition of land for the purpose of development or for any other purpose by the Central Government under the provisions of the Land Acquisition Act, 1894 and for the transfer of such land to the Authority or any local authority for the purpose for which land has been acquired on payment of compensation.[31] It empowers the Authority or the local authority to dispose of the land so acquired after undertaking or carrying out any development or without any development "for securing the development of Delhi according to plan."[32] Section 22 provides for placing at the disposal of the authority "all or any developed or undeveloped lands in Delhi vested in the Union ('nazul lands') for the purpose of development".

Section 30 clothes the Authority in the case of development area and the competent authority under the local authority in the case of any area other than the development area with powers to demolish any development which has been commenced, or is being carried on or has been completed in contravention of the master plan, or the zonal development plan or without the required permission under the Act. Similarly section 31 empowers the above authorities to stop any development which has been commenced in contravention of the master plan, etc. Both the sections specifically provide that these provisions "*shall be in addition to and not in derogation of any other provision relating to demolition of buildings/stoppage of building operations contained in any other law for the time being in force*".[33] (emphasis added)

The operation of the Slum Areas (Improvement and Clearance) Act, 1956 is given predominance over this Act by section 53 which provides that "*nothing in this Act shall affect*

[30]Section (12)3
[31]Section 5
[32]Section 21
[33]Sections 30(4) and 31(8)

the operation of the Slum Areas (Improvement and Clearance) Act, 1956"[34]. (emphasis added)

The Act has overriding effect on other laws. It provides that save as otherwise provided in sub-section (4) of section 30 or sub-section (8) of section 31 or sub-section (1) of section 53, "*the provisions of this Act and the rules and regulations made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law*".[35]

The Act further provides that other laws are not to affect development, etc., under this Act. It says that when permission for development has been obtained under this Act such development "*shall not be deemed to be unlawfully undertaken or carried out*" by reason only of the fact that the necessary sanction under other laws for such development has not been obtained. Similarly, when permission for such development has not been obtained under this Act, such development "*shall not be deemed to be lawfully undertaken or carried out*" by reason only of the fact that necessary sanction under such other laws for such development has been obtained.[36]

The Act places restrictions on the power of a local authority to make or amend any rule, regulation or bye-law in respect of water supply, drainage and sewage disposal, erection and re-erection of buildings including grant of building permissions, licences and imposition of restrictions on use and sub-division of buildings, sub-division of land into building sites, roads and lanes, etc., and development of land, improvement schemes and housing and rehousing schemes. It provides that such rules, regulations or bye-laws have to be certified by the Authority that they do not contravene any of the provisions of the master plan or the zonal development plan.

The Slum Areas (Improvement and Clearance) Act, 1956

The Act was enacted to provide for the improvement and clearance of slum areas in certain Union Territories and for the protection of tenants in such areas from eviction. It is a special statute for a special object and purpose for indefinite duration

[34]Section 53(1)
[35]Section 53 (2)
[36]Section 53(3)

and it applies to the union territory of Delhi.

Under the Act, the Competent Authority[37] is empowered to declare any area where the buildings are unfit for human habitation or by reason of dilapidation, overcrowding, etc., are detrimental to the safety, health or morals, to be a 'slum area'.[38] The Act also empowers the competent Authority to require improvement of buildings unfit for human habitation.[39] Under this section the authority has the power to do the work itself in case of failure by the owner of the building to do it and to collect from the owner the expenses incurrred in respect of such works.

Section 6-A empowers the Competent Authority to prohibit the erection of any building in a slum area except with the previous permission in writing of the Authority. The Authority has the power either to grant permission or refuse to grant such permission.

Sections 7 and 8 deal with the powers of the Competent Authority to order demolition of buildings unfit for human habitation and the procedure to be followed where demolition order has been made.

The Competent Authority has the power to declare an area to be a clearance area, that is to say, an area to be cleared of all buildings, if the Authority is satisfied that the most satisfactory method of dealing with the conditions in the area[40] is to make a slum clearance order in relation to that area.[41] This provision enables the owner of the land under the slum clearance order to redevelop the land in accordance with the plans approved by the Competent Authority and prohibits any person to commence any work in contravention of the plan approved.[42] Section 11 empowers the Competent Authority to redevelop the land by itself in public interest, or in case the owner does not redevelop the land within the specified time or the redevelopment is done in contravention of the plan approved by the

[37] "Competent Authority" means such officer or authority as the administrator may, by notification in the official Gazette, appoint as the competent authority for the purposes of the Act.

[38] Section 3

[39] Section 4

[40] Section 9

[41] Section 10

[42] *ibid*

Authority.

The Act provides for the acquisition by the Central Government of land within, adjoining or surrounding any slum area or any clearance area for executing any work of improvement or redevelopment and for making available the land so acquired to the Competent Authority.[43] It also provides for the basis for determination of compensation which "shall be an *amount* equal to sixty times the net average monthly income actually derived from such land during the period of five consecutive years immediately preceding the date of publication of the notice referred to in section 12."[44] Under section 16 which deals with the appointment of compensation, it is provided that in the case of disputes regarding the apportionment of compensation the Competent Authority is to refer the dispute to the Administrator who "shall follow as far as may be *the provisions of Part III of the Land Acquisition Act, 1894*". It further provides that in case the amount of compensation is not accepted by the persons entitled to receive the same, the competent Authority is entitled to deposit the amount in the Court and "the court shall deal with the amount so deposited in the manner laid down in *sections 32 and 33 of the Land Acquisition Act, 1894*". (emphasis added).

Section 33 of the Act empowers the Competent Authority to order demolition of buildings, where the erection of such building is in contravention of the provisions of the Act. Such an order of demolition may be "*in addition to any other remedy that may be resorted to under this Act or under any other law*". (emphasis added).

The Act specifically provides that it will have overriding effect on other laws. Section 39 provides that "*the provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law*". (emphasis added). This means that should a situation arise where the provisions of any other statute are different or at variance with the provisions of that Act, this shall be deemed to override and prevail over the provisions in the other Act.

[43]Section 12
[44]Section 15

The Urban Land (Ceiling and Regulation) Act, 1976

The object of the Act is "to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban lands in the hands of a few persons and speculation/ profiteering therein with a view to bring about an equitable distribution of land in urban agglomerations to subserve the common good".

In the definition section, "building regulations" is defined to mean "*the regulations contained in the master plan or the law in force governing the construction of buildings*".[45] (emphasis added) Master plan is defined to mean "*the plan (by whatever name called) prepared under any law for the time being in force* or in pursuance of an order made by the state government for the development of such area or part thereof and providing for the stages by which such development shall be carried out."[46]

Section 3 of the Act prohibits a person to hold any vacant land in excess of the ceiling limit which is prescribed under the Act.[47] The Act provides for the filing of statements before the Competent Authority under the Act by persons holding vacant land in excess of the ceiling limit and the particulars to be included in the statement.[48] The Competent Authority is to prepare the final statement under section 9.

The Act provides for the acquisition of vacant land in excess of the ceiling limit.[49] Under this section the competent authority has to publish a notification giving the particulars of the vacant land held by the person concerned in excess of the ceiling limit and stating that such vacant land is to be acquired by the concerned state government and requiring the persons interested in such vacant land to make their claims to the competent authority. The competent authority is empowered to declare by notification *that the excess vacant land shall, with effect from*

[45]Section 2(b)
[46]Section 2(h)
[47]Section 4
[48]Section 6
[49]Section 14

such date as may be specified in the declaration, be deemed to have been acquired by the state government. Upon the publication of such declaration, such land shall be deemed to have vested absolutely in the state government with effect from the date specified in the declaration. The section prohibits the transfer by way of sale, etc., of any excess vacant land between the publication of notification under sub-section (1) and the declaration under sub-section (3). Any change in the use of vacant land during the above period is also prohibited.

Section 11 provides for the payment of an amount for the vacant land acquired. It provides that where there is an income from the excess vacant land, the amount payable shall be equal to $8\frac{1}{3}$ times the net average annual income actually derived from such land during the five consecutive years immediately preceding the date of publication of notification under sub-section (1) of section 10. Where there is no income, the amount payable is to be calculated at a rate not exceeding ten rupees per square metre in the case of vacant land in an urban agglomeration falling within the category of A or B and five rupees per square metre in category C or D. Section 12 provides for the constitution of Urban Land Acquisition Tribunals for hearing appeals against the orders of the competent authority under section 11. Section 14 provides for the mode of payment of the amount.

Section 21(1), empowers the Competent Authority to permit any person holding vacant land in excess of the ceiling limit to continue to hold the same if such person declares before the Competent Authority that such land is to be utilized for the construction of dwelling units having a plinth area not exceeding 80 square metres, for the accommodation of the weaker sections of the society. Section 23 provides for the disposal of vacant land acquired under the Act. Under this section the state government is empowered to allot, in excess of the ceiling limit any vacant land acquired to any person for any purpose relating to any industry or for providing residential accommodation for the employees of the state government.

The Act requires a person holding vacant land within the ceiling limit to give notice to the competent authority before transferring such land by way of sale, etc.[50] Sub-section (2)

[50]Section 26(1)

confers a right of pre-emption on the state government to be exercised within 60 days of the receipt of notice, to purchase such land "*at a price calculated in accordance with the provisions of the Land Acquisition Act, 1894 or of any other corresponding law for the time being in force*". If the option is not exercised within sixty days, it shall be lawful for such person to transfer the land to whomsoever may like. For the purpose of calculating the price, "*it shall be deemed that a notification under sub-section (1) of section 4 of the Land Acquisition Act, 1894 or under the relevant provision of any other law for the time being in force*, had been issued for the acquisition of such vacant land on the date on which the notice was given under sub-section (1) of this section".[51] Similarly, section 27 requires the previous permission of the Competent Authority for transferring by way of sale, etc., any urban or urbanizable land with any building for a period of ten years. Here also the state government is given the right of pre-emption to purchase such land and building at a price calculated in accordance with the provisions of the Land Acquisition Act, 1894 as provided for under section 26.

Section 28 provides for the regulation of registration of documents pertaining to such transfers.

Section 29 prohibits the construction of buildings with dwelling units having a plinth area in excess of 300 square metres in an urban agglomeration falling within category A or category B and in excess of 500 square metres in C or D category.

Section 30 clothes the Competent Authority with powers of demolition and stoppage of buildings which are being constructed in contravention of Section 29.

The non-abstante clause says: "The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or any custom, usage or agreement or decree or order of a court, tribunal or authority".

PART II

It may be seen that all the four legislations, the provisions

[51]Section 26(3)

of which have been briefly explained in Part I of this paper, deal with the various aspects of urban land. In addition to these legislations there are other important land laws like the Land Acquisition Act, 1894, the Delhi Rent Control Act, 1968, the Urban Art Commission Act, 1973 which are in force in Delhi. Except the Land Acquisition Act which is a pre-constitutional law all the other legislations have to stand the test of the constitutional provisions to sustain their validity. Being a pre-constitutional law, the Land Acquisition Act does not have to satisfy the Constitutional requirements. While all the other legislations under study are subject to the overriding powers of the Constitution, the special legislations like the Slum Clearance Act, the Delhi Development Act and the Urban Land Ceiling Act have overriding effect on other laws. Thus, the Slum Clearance Act overrides all other laws including the Delhi Development Act which specifically provides that nothing in that Act "shall affect the operation of the Slum Areas (Improvement and Clearance) Act, 1956". The Delhi Development Act and the Urban Land Ceiling Act also contain similar "*non-abstante*" clauses. A *non-abstante* clause is used in an Act to indicate that the provisions of that Act would prevail over the provisions of other laws despite anything to the contrary in any other law. This does not, however, necessarily mean that the provisions in that Act are contrary to the provisions in other laws of the land. The only meaning is that where the provisions of any other law are different or at variance with the provisions of that Act, the latter shall be deemed to override and prevail over the former, subject to the Act being in conformity with the Constitution. However, it is for the legal experts to say what would be the result if two legislations having similar "*non-abstante*" clauses, contain provisions which are contrary to each other. In such cases the court might look at the "pith and substance" of the legislations to determine which one of them would prevail.

As has already been pointed out, the Delhi Municipal Corporation Act has a number of provisions which empower them to exercise control over the development of land. The Act, however, is dependent and is subject to certain other laws which are in force in Delhi for exercising those powers. Thus the Act can exercise its power to acquire land only through the

Land Acquisition Act, 1894. Again, in approving the layout plans the Act enjoins the Corporation to see whether the layout plan would conflict with the master plan or the zonal development plan. Similarly, the sanctioning of the erection of a building or execution of work is subject not only to the provisions of the Municipal Act and Bye-laws but also "any other law or rule or bye-law or order made under such other law". This covers all the legislations having some bearing on urban land. The Commissioner has also to see that the site of the proposed building or work is not affected by any scheme of acquisition of land for any public purpose. In the case of erection of building on either side of a new street, the Commissioner can refuse sanction if such work is in contravention of any other scheme or plan prepared not only under the Act but also under any other law for the time being in force. Similarly, in preparing the improvement schemes and rehousing schemes, the Act requires that such schemes are to comply with the provisions of the master plan or the zonal development plan prepared in accordance with the law.

The Act empowers the Commissioner to demolish and stop unauthorised constructions. Even though this power is not specifically made subject to any other law, it is provided for in the Delhi Development Act that such powers in the case of a "development area" are to be exercised by the Delhi Development Authority and in the case of any other area by the Competent Authority under the local authority. However, the Development Act further provides that those provisions shall be in addition to and not in derogation of any other provision relating to demolition/stoppage of building operations contained *in any other law* for the time being in force. There appears to be an overlapping of jurisdictions in the case of demolition and stoppage of unauthorised constructions, as the Development Act does not take away the powers of the Corporation given under the Corporation Act. Again, in the case of demolition of dangerous structures, it is only the Corporation that can exercise the powers and not the Development Authority, as such a power is not conferred on the Development Authority under the Development Act. Similarly, the powers of the Corporation to remove congested buildings, to require improvement of buildings unfit for human habitation, and to demolish such

buildings, to require removal, alteration or improvement of insanitary huts and sheds and to frame improvement schemes, etc., can be compared to the powers provided for under the Slum Clearance Act. Even though the Slum Clearance Act has overriding effect over the Corporation Act, one might feel that these are overlapping provisions, especially when one is reminded that the Corporation Act was enacted after the Slum Clearance Act came into force.

It may be gratifying to note that the Slum Clearance Act lays down a special procedure for acquisition of land for the purpose of the Act without relying upon the Land Acquisition Act, 1894 and provides a different basis for the determination of compensation. The Act, however, requires the Administrator to follow the provisions of the Land Acquisition Act in deciding disputes regarding apportionment of compensation. Similarly, whenever the compensation amount is deposited in the court, the Act requires the court to deal with the amount so deposited in the manner laid down in the Land Acquisition Act.

The Urban Land Ceiling Act also provides for an easier procedure for acquisition of vacant land and does not rely on the Land Acquisition Act for the same. Another novel feature of the Act is that it does not use the word 'compensation', but uses the word 'amount' which is in conformity with the Twenty-fifth Amendment. The formula prescribed under the Act for the payment of amount and the mode of payment are also different and more convenient and easier. Payment of 'market value' or "the just equivalent of what the owner has been deprived of" is done away with.

However, this Act also relies on the Land Acquisition Act while exercising its right of pre-emption for purchasing the land for the sale of which the owner has given notice to the competent authority, in determining its price. Under this provision the date of giving the notice by the owner of the vacant land to the competent Authority is to be deemed to be the date of notification under section 4 of the Land Acquisition Act.

Conclusion

The above discussion, it is presumed would substantiate the statement made in the first paragraph of this paper that the law

on urban land in India is so numerous and scattered that it is extremely difficult for anyone without special training to discover and understand the law that governs urban land. The legislations are interdependent with overriding effects and in certain cases, overlappings. One can very well imagine the plight of a citizen who owns a piece of land in urban area and wants to develop the land, say, by the erection of building, etc. He will have to pass through the legal bottlenecks of not one legislation, but a number of legislations. The solution to this problem lies in the consolidation of the legislations on urban land. Consolidation is not codification; it is a process whereby the provisions of many statutes dealing with one branch of the law are reduced into the compass of one modern statutory enactment of the law. Such consolidation would also result in modernising the law which is desired to retain in force, by removing from the statute obsolete, obsolescent and unnecessary provisions. The law should be capable of being recast in a form which is accessible, intelligible and in accordance with the modern needs.

THE URBAN LAND CEILING ACT 1976 AND SOCIALIZATION OF URBAN LAND

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India is perhaps the first country in the world to have framed a law imposing ceiling over vacant urban land held by an individual. The principle had been incorporated in the programme of the ruling party for over a decade, and it was with the sense of expectation that the average citizen greeted the Act. Whatever be the ideological leaning of an individual he cannot but laud the objectives of the Act which are mainly:

(*a*) to prevent concentration of urban property in the hands of a few persons and speculation and profiteering therein;

(*b*) to socialize urban land to subserve the common good by ensuring its equitable distribution;

(*c*) to discourage construction of luxury housing; and

(*d*) to secure orderly urbanization.

The spirit of the Act essentially is one of a *modus vivendi*— it is a socialization of surplus urban land, not a socialization of the entire urban land. It permits an individual to hold certain amount of land legally permissible and socially his due, but does not permit him to hold excess land which would necessarily be to the detriment to his fellow members of society. The principles of socialization of land and of private property are both effectively combined and enunciated by the Act, without displaying any form of extremism.

The criticisms currently voiced against the Act generally do not pertain to the objects of the Act, but only against the inconveniences and dislocations which have arisen owing to the initial impact of the Act. The primary impact of any new law momentarily dislocates the normal conduct of business, just as

an urban land ceiling and regulation Act, for a while dislocated the normal working of the corporations, municipalities, co-operative societies, industries, land acquisition departments, farms, and brought about many inconveniences to citizens. Such inconveniences and dislocations are not uncommon in the period of transition. With the steady streams of guidelines and explanations from Government, they are being minimised, and once the optimum coordination is reached between various departments seriously touched by the Act, they will become negligible.

There is no case of hardship felt by an individual, for which a remedy is not available in the Act. The agriculturists claimed that the age old profession of agriculture was being robbed from them, because their agricultural lands, unfortunately happened to be situated in the urban belt of the master plan. Their fears were set aside as the Government issued guidelines that they could continue undisturbed until such time it becomes absolutely urgent for the State to take over such surplus lands. Similarly, sales of buildings and appurtenant land are now permitted regardless of the total holdings of a person, and complaints of inability to sell to ward off poverty and indebtedness are not on the decline. The Government has similarly advocated a sympathetic view to be taken on the merits of each case in respect of sale of land for which agreements were made and considerations paid by the buyers to the vendors, but for which registrations were prevented due to coming into force of the Act. The industries are being looked after by a High Power Committee which decide their exemptions. Similarly, the individuals holding marginal surplus area are permitted to continue their construction activities, assuming that the Government will exempt them. And by any standard the appurtenant land and the additional appurtenant land permissible under the Act is a generous figure.

The Urban Land Ceiling Act, 1976—its Limitations and Problems Faced by the Implementing Authorities

Since the Act of this nature is unprecedented, lack of judicial interpretation and precedent has left large area of the legislation to the interpretation of the implementing authorities. In the early stages many doubts were felt regarding Section

4(9), the legal status of Hindu Undivided Family, its partition, acquisition of marginal surplus land to be taken over, choice of land to be surrendered to Government, the impact of the Act on land acquisition, definition of 'land being mainly used for agriculture'. A thorough reading of the Act with a common-sense approach towards its intrepretation could solve many of these doubts. The interpretation of certain fundamental principles, *e.g.*, Section 4(9), Hindu Undivided Family, etc., have been settled. The only handicap that the implementing authorities initially experienced was the wanting of coordination between the various departments effected by this Act and the realization that staff would have to be augmented if this Act were to be faithfully implemented. The lack of established procedures also accounted for some of the hardships and inconveniences which were experienced by the citizens. Now that many procedures have been established keeping in view expediency, equity and speed, hardship felt by the implementing authorities and by the citizens is decreasing.

Certain problems continue to exist in the minds of the implementing authorities. To take one example—Family is defined under Section 2(f) as consisting of an individual, wife or husband of such individual, and their minor and unmarried children. Under Section 4(7) of the Act partition of Hindu Undivided Family is permitted. As per the Hindu personal laws, the minor male co-partner is also entitled to a share in the property, but the minor when he receives his share is deprived of the same by virtue of the definition of family under the Act. Another query which arises is that since the major children have not been mentioned in the definition of Family, does it mean that they are entitled to a share of their parents' property if it is self-acquired property. Further, the complaint of the other communities is that they have not been given the benefits which have been made available to the Hindu Undivided Family.

The working of Development Authorities and Improvement Trust Boards came to a standstill as they were not able to acquire lands for new layouts since most of the holders whose lands had to be acquired were surplus holders falling within the purview of the Act. Though much attention has been given to this problem, a satisfactory solution has not yet emerged which

ensures speedy disposal and thrift. One of the simple way to overcome this difficulty is to amend the Land Acquisition Act to the effect that if land acquired under the Land Acquisition Act is surplus land under the Urban Land Ceiling Act, then compensation to be paid should be in terms of the Urban Land Ceiling Act.

Impact of the Urban Land Ceiling on

(*a*) *Industrial Development*: No basic statistics are available to support the argument that the Act has dampened the enthusiasm of the entrepreneurs. However, there was a feeling of great concern and worry in industrial circles. Perhaps industries were not included in the list of exempt bodies under Section 19 of the Act because loopholes would be created for bogus industries and those in possession of lands for above their actual requirements. There is some truth in the assertion that the already existing red-tape for the industries has doubled since the advent of this Act. The grant of exemption may be somewhat cumbersome and time consuming. Until such exemption is granted mortgage for credits in banks and financial institutions is not possible. Section 20(1)(a) empowers the State Governments to exempt industries and it is up to the State Governments to formulate simple and speedy procedures to exempt industries. These procedures once formulated and established will prevent any major set-back to the industrial growth.

(*b*) *Housing Activities*: There is a general feeling amongst the public that housing activities have come to a standstill after the enforcement of the Act. The Act cannot be held fully responsible for such a situation as building activities were in decline ever since the monetory curbs came into play. The Act does not forbid building activities within the ceiling limit. In fact vertical growth of buildings is encouraged. What has come to a standstill is building activities on surplus land. To that extent it can be said that the Urban Land (Ceiling and Regulation) Act has curbed the building industry.

(*c*) *Group Housing*: Section 4(3) of the Act which deals with the Group Housing restricts itself to the schemes which have been sanctioned immediately before the commencement of this Act. There is no other concession given to Group Housing

schemes after the commencement of the Act.

(*d*) *Co-operative Societies*: All cooperative societies are exempted from the application of chapter III by Section 19(vii). The lands held by them may be transferred even if they are above ceiling. The only obstacle they face is that they cannot acquire surplus lands from any individual due to restrictions contained under Section 5(3). The future of the House Building Cooperative societies is very bleak. After distributing all lands already held by them, they will find it impossible to acquire land from private individuals, for fresh schemes and layouts.

The Urban Land Ceiling Act and the Weaker Sections of the Society

The needs of the weaker section of the society have been taken care of by Section 21 of the Act. The Act enables individuals to come forward with schemes to construct houses for them and implementing authorities cannot declare such land used for the construction of houses as surplus. The right of prescribing terms and conditions has been reserved by the Central Government so as to negate possibility of persons using this as an opportunity to circumvent the Act. This scheme is advantageous as it provides accommodation to the weaker section of the society of which there is a great scarcity and the land holder also enjoys marginal profit from the scheme and gets exemption from the operation of the Act.

Since the ideas pertaining to housing for the weaker sections of society are still at an embryonic stage and as guidelines for such constructions have not been prescribed by the Central Government yet, we cannot predict accurately the outcome and the impact of this scheme.

Urban Land Ceiling Act and the Building Bye-laws

The concept of appurtenant land to a certain degree has been merged with the existing bye-laws of the Municipalities. Under no circumstances can appurtenant land as defined under Section 2(g)(i) be declared as vacant land. The Act further overrides the concept of appurtenant land as may be defined according to the municipal bye-laws, insomuch as it prescribes a maximum appurtenant land of 500 square metres only,

whatever be the appurtenant land prescribed by the municipal bye-laws. This appears to be a fair compromise, not being unreasonable, neither permitting unreasonable large extent of vacant land as appurtenant land. There seems to be no necessity to revise the municipal bye-laws.

Utilisation of the Surplus Land Acquired Under the Act

Wherever master plans are in existence the utilization of acquired land may not pose any problem because the outline development plan clearly indicates the land use pattern of the area. The vacant land falling within such area can be utilized for the purpose for which the land has been reserved.

The State Government may constitute a small committee representing various interests to deal with the utilization of acquired lands. The lands acquired may be pooled in a land bank and allotted by the said committee as and when the institutions (Government or other) or people approach for allotment of lands. In case the State Government intends to augment its resources it can dispose of the acquired lands at prevailing market rates or any other rates determined by it. Hence the Urban Land Ceiling Act can also be treated as a resource generating Act. There is nothing to prevent the State Government from auctioning the acquired lands, if it desires to do so.